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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO
BEFORE THE HONORABLE JOHN E. MUNTER, JUDGE
DEPARTMENT NO. 505

LESLIE J. WHITELEY AND)
LEONARD WHITELEY,)
PLAINTIFFS,)
VS.) NO. 303184
RAYBESTOS-MANHATTAN, INC., ET)
AL.,)
DEFENDANTS.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
FRIDAY, MARCH 24, 2000
(VOLUME 46, PAGES 6132-6184)

REPORTED BY: JUDITH ANN OSSA, CSR 2310
OFFICIAL REPORTER

JUDITH ANN OSSA, CSR NO. 2310

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APPEARANCES:

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FOR THE DEFENDANT R.J. REYNOLDS TOBACCO COMPANY:

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200 WEST SECOND STREET
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JUDITH ANN OSSA, CSR NO. 2310

FRIDAY, MARCH 24, 2000 9:02 A.M.

(THE FOLLOWING PROCEEDINGS WERE HELD IN THE COURTROOM, IN THE PRESENCE OF THE JURY)

THE COURT: GOOD MORNING, EVERYBODY.

I'M GOING TO START OUT BY REPEATING TO YOU THE INSTRUCTIONS THAT I GAVE AT THE OUTSET OF THIS PHASE OF THE CASE.

AND ONCE AGAIN, I'M GOING TO MAKE A WRITTEN COPY OF THESE INSTRUCTIONS AVAILABLE TO YOU DURING THE COURSE OF YOUR DELIBERATIONS.

"YOU MUST NOW DETERMINE WHETHER YOU SHOULD AWARD PUNITIVE DAMAGES AGAINST DEFENDANTS PHILIP MORRIS INCORPORATED AND R.J. REYNOLDS TOBACCO COMPANY FOR THE SAKE OF EXAMPLE AND BY WAY OF PUNISHMENT. WHETHER PUNITIVE DAMAGES SHOULD BE IMPOSED, AND, IF SO, THE AMOUNT THEREOF, IS LEFT TO YOUR SOUND DISCRETION, EXERCISED WITHOUT PASSION OR PREJUDICE.

IF YOU DETERMINE THAT PUNITIVE DAMAGES SHOULD BE ASSESSED AGAINST ONE OR BOTH OF THE

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TOBACCO COMPANY DEFENDANTS, IN ARRIVING AT THE AMOUNT OF SUCH AN AWARD, YOU MUST CONSIDER:
1. THE REPREHENSIBILITY OF THE CONDUCT OF THE DEFENDANT;
2. THE AMOUNT OF PUNITIVE DAMAGES WHICH WILL HAVE A DETERRENT EFFECT ON THE

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DEFENDANT IN THE LIGHT OF DEFENDANT'S FINANCIAL CONDITION;
3. THAT THE PUNITIVE DAMAGES MUST BEAR A REASONABLE RELATION TO THE INJURY, HARM, OR DAMAGE ACTUALLY SUFFERED BY THE PLAINTIFFS.

"BECAUSE PUNITIVE DAMAGES CONSTITUTE A PAYMENT TO THE PLAINTIFFS THAT EXCEEDS THE ACTUAL DAMAGES TO WHICH THEY ARE OTHERWISE ENTITLED, PUNITIVE DAMAGES MAY BE IMPOSED WHERE AND TO SUCH EXTENT, BUT ONLY WHERE AND TO SUCH EXTENT, AS NECESSARY TO ACHIEVE JUST PUNISHMENT AND ADEQUATE DETERRENCE."

OKAY. I THINK WE ARE READY FOR CLOSING ARGUMENTS. MS. CHABER, MAY PROCEED.

MS. CHABER: THANK YOU, YOUR HONOR.

CLOSING ARGUMENT BY MS. CHABER

MS. CHABER: GOOD MORNING. YOU HAVE FOUND THROUGH CAREFUL DELIBERATION, THROUGH LISTENING TO -- I HATE TO SAY THIS -- BUT TWO MONTHS OF TRIAL, AND DELIBERATING FOR SEVEN DAYS THAT R.J. REYNOLDS TOBACCO COMPANY AND PHILIP MORRIS TOBACCO COMPANY ACTED WITH MALICE, FRAUD OR OPPRESSION, ACTED WITH CONSCIOUS DISREGARD FOR THE RIGHTS AND SAFETY OF OTHERS.

THIS PORTION OF THE CASE IS NOT ABOUT LESLIE WHITELEY. YOU HAVE CONSIDERED LESLIE WHITELEY. YOU HAVE CONSIDERED HER INJURIES. YOU HAVE COMPENSATED HER FOR

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THAT. HER FAMILY THANKS YOU FOR YOUR CAREFUL DELIBERATIONS AND DECISION.

IN THIS PART OF THE CASE, THE FOCUS IS ON R.J. REYNOLDS AND PHILIP MORRIS. WE'RE TALKING ABOUT PUNITIVE DAMAGES. AND AS ADOPTED INTO THE LAW, IT HAS A TWOFOLD PURPOSE, PUNISHMENT AND DETERRENCE, TO SET AN EXAMPLE FOR THE RIGHT WAY THAT WE EXPECT COMPANIES TO CONDUCT BUSINESS IN CALIFORNIA.

THERE ARE, I AM HAPPY TO TELL YOU, ONLY TWO QUESTIONS IN THIS VERDICT FORM ON ONE PAGE.

THIS IS QUESTION NO. 1:

"SHALL PUNITIVE DAMAGES BE ASSESSED AGAINST PHILIP MORRIS INCORPORATED AND R.J. REYNOLDS TOBACCO COMPANY? YES OR NO."

THE ANSWER TO THIS QUESTION IS AND MUST BE "YES" FOR PHILIP MORRIS AND "YES" FOR R.J. REYNOLDS (MARKING DOCUMENT).

IF YOU DO NOT ASSESS PUNITIVE DAMAGES AGAINST THESE DEFENDANTS, YOU'VE SENT THE WRONG MESSAGE. PUNITIVE DAMAGES ARE TO DIFFERENTIATE BETWEEN THE BLAMELESS, INNOCENT COMPANY THAT ACTS WITHOUT FRAUD, THAT ACTS TRUTHFULLY AND HONESTLY, THAT DOESN'T INTEND TO HARM ANYONE. IT DOESN'T HAVE ANY IDEA THAT ITS PRODUCT IS HARMFUL BUT ITS PRODUCT NONETHELESS INJURES SOMEONE.

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IT'S TO DIFFERENTIATE THEM, TO SEPARATE THEM FROM THE COMPANY THAT ACTS WITH MALICE OR FRAUD. THERE IS NO JUSTIFICATION FOR EQUAL TREATMENT OF THE COMPANY THAT IS BLAMELESS AND THE COMPANY THAT YOU HAVE FOUND -- THE

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COMPANIES -- HAVE ACTED WITH MALICE, FRAUD OR OPPRESSION. THAT WAS YOUR VERDICT.

IF YOU DO NOT SAY "YES" TO PUNITIVE DAMAGES, YOU HAVE TOLD THESE DEFENDANTS THAT IT'S OKAY TO MISREPRESENT, THAT IT'S OKAY TO BE DISHONEST, THAT IT'S OKAY TO MAKE FALSE PROMISES, THAT THAT'S JUST ANOTHER WAY TO DO BUSINESS. YOU CANNOT LET THESE DEFENDANTS OFF THE HOOK. YOU CANNOT SANCTION OR APPROVE THAT KIND OF CONDUCT.

THINK ABOUT WHAT A MESSAGE THAT WILL SEND. "OH, IT'S OKAY TO DO THESE THINGS UNTIL YOU GET CAUGHT. AND THEN YOUR PUNISHMENT IS THE SAME AS ANYBODY ELSE'S WHO DIDN'T DO THESE THINGS."

THAT'S NOT RIGHT. YOU MUST SEND THE CORRECT MESSAGE AND THE ONLY CORRECT MESSAGE IS THE ONE UP THERE, "YES, YES," PUNITIVE DAMAGES SHOULD BE ASSESSED.

THE SECOND QUESTION:

"WE ASSESS PUNITIVE DAMAGES AGAINST DEFENDANTS, AS FOLLOWS:"

AND AGAINST PHILIP MORRIS, AGAINST R.J. REYNOLDS.

THIS IS THE "HOW MUCH" QUESTION. AND THE QUESTION OF HOW MUCH IS GUIDED BY THE LAW. AND I'LL SHOW YOU WHAT THE LAW TELLS YOU ARE THE THINGS TO HELP YOU MAKE THIS DECISION, BUT YOU ALSO HAVE TO THINK OF THE KIND OF MESSAGE THAT YOU WANT TO SEND.

DO YOU WANT TO SEND A LITTLE FLICK ON THE HAND OR DO YOU WANT TO SEND A MESSAGE THAT'S FELT, THAT'S NOTICED, THAT MAKES A DIFFERENCE, THAT MATTERS?

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NO ONE WANTS TO PUT THESE DEFENDANTS OUT OF BUSINESS. THAT'S NOT YOUR JOB. THAT'S NOT MY CLIENT'S REQUEST. THAT'S NOT MY REQUEST. BUT YOU MUST SEND A MESSAGE THAT IS SUFFICIENT FOR THESE DEFENDANTS TO HEAR.

AND LET ME SHOW YOU THE GUIDANCE THAT THE LAW GIVES. THERE ARE THREE THINGS YOU LOOK AT IN DETERMINING HOW TO ASSESS THE "HOW MUCH?"

THE FIRST IS THE REPREHENSIBILITY OF THE CONDUCT. YOU LISTENED TO THIS TRIAL FOR WEEKS. YOU SAW THE EVIDENCE. YOU HEARD THE EVIDENCE. YOU FOUND THAT THIS WAS NOT ACTS DONE BLAMELESSLY. YOU FOUND THAT THE DEFENDANTS MISREPRESENTED. YOU FOUND THAT THEY INTENTIONALLY MISREPRESENTED, AND THAT THEY MADE FALSE PROMISES, AND THAT THEY DID THESE THINGS KNOWINGLY, WILLFULLY, REPREHENSIBLY.

I'M NOT GOING TO GO OVER THE EVIDENCE THAT YOU WENT THROUGH AND HEARD, BUT IT WILL BE AVAILABLE TO YOU IN THE JURY ROOM, IF YOU FEEL YOU NEED TO REFER TO IT.

THE SECOND GUIDE THE LAW GIVES IS THAT:

"THE AMOUNT OF THE PUNITIVE DAMAGES SHOULD BE AN AMOUNT WHICH WILL HAVE A DETERRENT EFFECT ON THE DEFENDANT IN LIGHT OF THE DEFENDANT'S FINANCIAL CONDITION."

NOW, WHAT DOES THAT MEAN, "IN LIGHT OF THE DEFENDANT'S FINANCIAL CONDITION"? IF YOU'RE AN INDIVIDUAL MAKING $50,000 A YEAR, WHAT'S A PUNISHMENT TO YOU? WHAT'S A DETERRENT TO YOU FROM ENGAGING IN DISHONEST CONDUCT IS VERY DIFFERENT THAN IT IS FOR COMPANIES SUCH AS PHILIP MORRIS AND

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R.J. REYNOLDS, WHOSE NET WORTH IS IN THE BILLIONS.

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LET ME GIVE YOU A PERSPECTIVE OF WHAT A BILLION DOLLARS IS. IF YOU GIVE SOMEBODY A MILLION DOLLARS, $1 MILLION, AND YOU SAY TO THEM, "I WANT YOU TO GO SPEND THIS MILLION DOLLARS, SPENDING $1,000 EVERY DAY," AND YOU SEND THEM OFF. IT WILL TAKE THREE YEARS BEFORE YOU SEE THAT PERSON AGAIN, BEFORE THEY'RE OUT OF MONEY.

IF YOU GIVE SOMEBODY $1 BILLION, AND SAY, "GO SPEND THIS BILLION DOLLARS, $1,000 EVERY DAY," IT WILL TAKE LONGER THAN YOUR LIFETIME, THEIR LIFETIME. IT WILL TAKE 3,000 YEARS.

THESE DEFENDANTS ARE THE FIRST LARGEST CIGARETTE COMPANY IN THIS NATION, PHILIP MORRIS, AND THE SECOND LARGEST CIGARETTE COMPANY IN THIS NATION, R.J. REYNOLDS, AND THEIR NET WORTH EXCEED SOME COUNTRIES' GROSS PROFITS.

SO WHEN IT COMES TIME FOR PUTTING A NUMBER HERE (INDICATING), YOU MUST TAKE INTO CONSIDERATION WHAT WILL BE FELT BY THIS COMPANY. NOTHING SHORT OF NINE FIGURES WILL HAVE ANY SIGNIFICANCE.

THERE'S A THIRD JURY -- OR A THIRD PART OF THE GUIDANCE YOU GET IN MAKING A DETERMINATION ON THE AMOUNT, AND THAT IS:

"THAT THE PUNITIVE DAMAGES MUST BEAR A REASONABLE RELATION TO THE INJURY, HARM, OR DAMAGE ACTUALLY SUFFERED BY THE PLAINTIFFS."

YOU HEARD THE TESTIMONY. LESLIE WHITELEY WILL LOSE 42 YEARS OF HER LIFE. SHE WILL LEAVE BEHIND HER HUSBAND TO CARE FOR FOUR MINOR CHILDREN. THERE IS NO QUESTION THAT THE INJURY, HARM OR DAMAGE SUFFERED BY THE

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PLAINTIFFS IS REAL AND IMMEASURABLE.

TAKING ALL OF THESE THINGS INTO ACCOUNT --

(ATTORNEYS CONFER)

MS. CHABER: JUST TO MAKE THAT CLEAR (MARKING DOCUMENT) "$62,000,000." THAT SOUNDS LIKE AN ABSOLUTELY ENORMOUS SUM, BUT IT IS NOT FOR A COMPANY LIKE PHILIP MORRIS. IT IS A SUM, HOWEVER, THAT WILL BE HEARD, THAT WILL BE PAID ATTENTION TO, AND THAT WILL AMOUNT TO A DAY OR TWO EQUIVALENCE OF SUSPENSION OF WORK.

AND FOR R.J. REYNOLDS, (MARKING DOCUMENT) "$53,000,000." THAT SOUNDS LIKE A LOT. THOSE NUMBERS IN FRONT OF IT, IT SOUNDS LIKE A LOT, BUT NOT FOR THESE COMPANIES.

I TRUST YOU, LADIES AND GENTLEMEN, TO DO WHAT IS RIGHT, WHAT IS FAIR, WHAT IS REASONABLE AND WHAT WILL SEND THE RIGHT MESSAGE, A MESSAGE THAT WILL ACTUALLY BE HEARD.

THANK YOU.

THE COURT: I HAVE INDICATED TO COUNSEL THAT I'M GOING TO ALLOW THEM TO DETERMINE WHEN WE TAKE BREAKS THIS MORNING AND FOR HOW LONG.

SO LET ME ASK: DO YOU WANT US TO TAKE A SHORT BREAK AT THIS POINT?

MR. HARDY: NO, I DON'T THINK SO, YOUR HONOR.

THE COURT: OKAY.

MR. HARDY: UNLESS THE JURY WANTS A BREAK, I DON'T.

THE COURT: IF THERE IS ANYBODY ON THE JURY WHO WANTS A BREAK, LET ME KNOW.

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I SEE NO TAKERS.
SO YOU CAN GO AHEAD.

CLOSING ARGUMENT BY MR. HARDY

MR. HARDY: MAY IT PLEASE THE COURT, COUNSEL, AND LADIES AND GENTLEMEN OF THE JURY, ONE LAST TIME.

PHILIP MORRIS IS A COMPANY, AND THIS IS AN INDUSTRY -- IF YOU DIDN'T KNOW IT BEFORE THIS TRIAL, YOU CERTAINLY KNOW IT NOW -- THAT IS DOING BUSINESS, A CONTROVERSIAL BUSINESS, AND DOING IT UNDER A MICROSCOPE. AND I THINK, IN RECENT YEARS, YOU LEARNED ALSO THAT IT'S A VERY HIGH-POWERED MICROSCOPE.

IN PHASE II, WE SHOWED YOU THAT AMIDST THE HEALTH CONCERNS, THE GROWING HEALTH CONCERNS OF THE PREVIOUS DECADES THAT YOU LEARNED ABOUT IN PHASE I, THE COMPANY SETTLED A CATEGORY OF LITIGATION, THE ATTORNEYS GENERAL CASES,, AND WE BROUGHT YOU SOME EVIDENCE ABOUT WHAT THE SPECIFIC TERMS OF THAT SETTLEMENT WAS.

AND WE SHOWED YOU EVIDENCE ABOUT THE YOUTH SMOKING PREVENTION PROGRAM THAT PHILIP MORRIS INSTITUTED BEFORE THE MSA SETTLEMENT AGREEMENT, GOING BACK AT LEAST TO '95 WITH THE "WE CARD" PROGRAM.

NOW, IF YOU, AS JURORS, IN YOUR DELIBERATIONS NOW ARE ASKING YOURSELVES: "WHAT SHOULD WE BE CONCERNED ABOUT IN TERMS OF PHILIP MORRIS' BEHAVIOR NOW AND WHAT SHOULD WE BE THINKING ABOUT IN TERMS OF PHILIP MORRIS' BEHAVIOR TOMORROW AND TOMORROW AND ON INTO THE FUTURE?" I ASSUME THAT ONE OF THOSE THINGS IS UNDERAGE SMOKING.

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AND THAT'S WHY -- PART OF THE REASON THAT WE BROUGHT YOU ELLEN MERLO, BECAUSE I THINK THAT SHE COVERED REASONABLY WELL BOTH THE INVOLUNTARY CHANGES FROM THE MSA SETTLEMENT AGREEMENT AND ALSO THE THINGS THAT THE COMPANY DID BEFORE THAT AND SINCE THAT TIME.

BEAR IN MIND, PLEASE, THAT NEITHER PHILIP MORRIS NOR R.J. REYNOLDS SIMPLY TURNED AROUND AND WALKED OFF THE PLAYING FIELD AND SAID, "OKAY. YOU THINK WE HAVE BEEN MARKETING TO YOUTH. YOU HAVE INSTITUTED THESE THINGS THAT WE HAVE TO DO OR CAN'T DO. WE'LL GO STAND ON THE SIDELINES WITH OUR ARMS UP AND DEFEND OURSELVES AND CONTINUE A BUNKER MENTALITY, AND THE PUBLIC HEALTH SERVICE AND SOMEBODY ELSE CAN FIGURE OUT HOW TO KEEP CIGARETTES AWAY FROM KIDS AND HOW TO TEACH CHILDREN NOT TO SMOKE AND HOW TO TEACH PARENTS TO TEACH THEIR CHILDREN NOT TO SMOKE."

THEY DIDN'T DO THAT. THEY STAYED ON THE PLAYING FIELD AND THEY HAVE TRIED, AND THEY ARE TRYING NOW TO EDUCATE THE PUBLIC, TO EDUCATE CHILDREN, TO EDUCATE PARENTS THAT CHILDREN SHOULDN'T SMOKE.

AND THEY ARE DOING IT I THINK BOTH VOLUNTARILY AND UNDER THE MSA SETTLEMENT AGREEMENT. YOU HEARD ABOUT THINGS THAT PHILIP MORRIS DID BEFORE, LIKE ELIMINATING SAMPLING ALL TOGETHER.

I ASSUME THE SECOND POINT THAT MAY BE OF INTEREST TO YOU IS WHAT WE MIGHT CALL PUBLIC VISIBILITY OF CIGARETTES. REMEMBER, IN PHASE I, THERE WAS LOTS OF TESTIMONY ABOUT THE FACT THAT ALMOST EVERYBODY WAS SMOKING, IF YOU GO BACK FAR ENOUGH, THAT CIGARETTES WERE PART OF THE

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FABRIC OF AMERICAN LIFE, IF YOU ARE TALKING ABOUT THE 1940S AND THE 1950S ON TELEVISION AND MOVIES AND ADS EVERYWHERE

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AND COMMERCIALS.
AND THAT CHANGED OVER TIME AS THE HEALTH CONCERNS GREW. AND IT CHANGED AS THE COMPANIES BEGAN TO DO THINGS.
BUT THE MSA SETTLEMENT AGREEMENT INVOLVES SOME VERY EXTREME AND SPECIFIC REGULATION, WHICH I THINK WITHDRAWS CIGARETTES FROM PUBLIC VISIBILITY IN IMPORTANT WAYS. THE BILLBOARDS ARE GONE. THE SPONSORSHIPS ARE DOWN TO NOT MORE THAN ONE A YEAR, AND THEN ONLY IF LARGELY AN ADULT AUDIENCE.
YOU WON'T BE GETTING MARLBORO CAPS OR CAMEL JACKETS IN THE MAIL ANYMORE BECAUSE NAME BRAND GEAR IS GONE. SAMPLING HAS BEEN SEVERELY CURTAILED, AND AS YOU HEARD, PHILIP MORRIS HAD STOPPED DOING THAT ANYWAY.
AND REMEMBER THAT IN PHASE I -- YOU HEARD A GOOD BIT OF EVIDENCE ABOUT IT -- THINGS THAT THE TOBACCO INSTITUTE, THE PUBLIC RELATIONS ARM OR THE MEDIA ARM OF THE COMPANIES HAD SAID OR DONE. AND THE TOBACCO INSTITUTE IS DISSOLVED.
A THIRD AREA, I THINK, OF INTEREST OR CONCERN MAY BE RESEARCH. SMOKERS OR NONSMOKERS, PRESUMABLY PEOPLE IN THIS COUNTRY WANT TO KNOW THAT THE COMPANIES ARE TRYING TO MAKE SAFER CIGARETTES, AND THAT THEY WILL CONTINUE TO TRY TO MAKE SAFER CIGARETTES, AND THAT THE PUBLIC CAN CHECK ON IT AND SEE IF THE WORK IS BEING DONE AND WHO IS DOING THE WORK AND SEE WHAT THE RESULTS OF THE WORK ARE.
AND I THINK THAT SORT OF THING IS CLEARLY

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ACCOMPLISHED BY BOTH THE INDIVIDUAL MINNESOTA SETTLEMENT AND THE MSA SETTLEMENT AGREEMENT, THE MINNESOTA LIBRARY, THE INTERNET, THE ENFORCEMENT PROVISIONS THAT ENABLE THE ATTORNEYS GENERAL AND THEIR TEAMS TO COME IN WHEN THEY LIKE, WHERE THEY LIKE AND INSPECT WHAT THEY LIKE.
WE OFFERED YOU ALSO, I THINK, THROUGH THE TESTIMONY OF ELLEN MERLO, EVIDENCE OF PHILIP MORRIS' CHANGE IN ATTITUDE OR ATTITUDE SHIFT, IF YOU WILL. THAT'S REALLY WHAT THE MISSION STATEMENT AND THE CORE VALUE CARD WERE ABOUT. NOT PR, BUT AN EFFORT WITHIN THE COMPANY INSTITUTED BY MIKE SZYMANCZYK AND ELLEN MERLO AND THE OTHER EXECUTIVES SHORTLY AFTER MR. SZYMANCZYK BECAME PRESIDENT TO BE SURE THAT THE EMPLOYEES NOT ONLY UNDERSTAND WHAT THE GOALS OF THE
COMPANY ARE AND WHAT THE OBJECTIVES ARE AND THE DESIRE TO COMMUNICATE OPENLY WITH THE PUBLIC HEALTH SERVICE AND THE GOVERNMENT AND THE PUBLIC, BUT TO IN FACT RATE AND COMPENSATE AND JUDGE THE EMPLOYEES, INCLUDING THE EXECUTIVES THEMSELVES, BY THE TERMS OF THAT MISSION STATEMENT AND THOSE CORE VALUES.
AND YOU HEARD A LOT ABOUT THE WEBSITE, NOT JUST IN PHASE II BUT YESTERDAY ALSO. THAT'S WHY WE PUT IN THE PORTION OF THE WEBSITE THAT RELATES TO SMOKING, SO THERE WOULDN'T BE ANY CONFUSION ABOUT WHAT PHILIP MORRIS SAYS ON THE WEBSITE. IF YOU'RE INTERESTED, YOU CAN LOOK AT THAT. IT'S AN EXHIBIT.
NOW, PHILIP MORRIS AS A COMPANY IS DETERMINED TO BE AND TO BE VIEWED AS A GOOD CORPORATE CITIZEN, TO EARN THE TRUST AND THE RESPECT OF THE PUBLIC AND THE GOVERNMENT AND

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THE PUBLIC HEALTH SERVICE.
I DON'T THINK THEY'RE KIDDING THEMSELVES THAT THAT'S EASY OR THAT THEY CAN DO THAT OVERNIGHT. YOU CAN'T UNDUE DECADES OF DISTRUST OR DISAGREEMENT WITH ONE OR TWO

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EFFORTS OR WITH A FEW WEEKS OR EVEN A FEW MONTHS.
THE POINT IS, I THINK THEY'RE ON THE RIGHT TRACK. AND I THINK WE'D ALL AGREE THAT IT IS HEALTHIER IN THIS COUNTRY TO OPERATE IN AN OPEN WAY, WITH OPEN DIALOGUE, INSTEAD OF BEING DEFENSIVE, INSTEAD OF HAVING A BUNKER MENTALITY. THAT'S THE POINT YOU ALREADY MADE IN A FINDING IN THIS CASE AS TO WHAT THE PROPER COMPENSATION IS FOR MR. AND MRS. WHITELEY.
YOU'VE DETERMINED THAT, AND YOU'VE DETERMINED ALSO IN THE MESSAGE YOU SENT THROUGH SOME OF THE SPECIAL VERDICT FORMS THAT YOU THINK PHILIP MORRIS BEHAVED BADLY IN THE PAST. AND I'M NOT GOING TO ARGUE ABOUT THAT. I RECOGNIZE IT'S TOO LATE FOR ME TO DO THAT. WE ARE PAST IT.
THE QUESTION NOW IS: IS THERE A NEED TO PUNISH AND DETER PHILIP MORRIS? YOU'VE ALREADY TOLD US WHAT YOU THINK OF THE CONDUCT.
I SUGGEST THAT THERE NOT ONLY IS NO NEED TO PUNISH OR DETER, BUT THAT IT IS, IN EFFECT, AND, IN FACT, COUNTERPRODUCTIVE. THE COMPANY GOT THE MESSAGE. THEY, OF COURSE, GOT THE MESSAGE OF YOUR VERDICT LAST MONDAY. THEY GOT THE MESSAGE FROM THE PUBLIC, AS YOU HEARD FROM MS. MERLO, SEVERAL YEARS AGO, THROUGH A COMBINATION OF THE PUBLIC OUTCRY AND THE LAWSUITS, INCLUDING THE ONES FILED BY THE ATTORNEYS GENERAL.

I DON'T THINK SHE CAME HERE AND ASKED FOR A PAT ON THE BACK OR A GOLD STAR, BUT THE CONTROL IS EXTREME. I'M NOT SUGGESTING IT'S INAPPROPRIATE, BUT IT IS EXTREME. IT IS EXTENSIVE.
AND I WOULD EXPECT THAT YOU AND OTHER CITIZENS ARE WARY ABOUT THIS, DOUBTFUL FULL ABOUT IT. I THINK THAT'S APPROPRIATE. IT'S UNDERSTANDABLE.
I ALSO BELIEVE THAT AS LONG AS THE FEDERAL GOVERNMENT BELIEVES THAT THIS CONTROVERSIAL PRODUCT IS LEGAL AND CAN BE SOLD AND BOUGHT, AS LONG AS REGULATED, THAT YOU SHOULD LEAVE REGULATION TO THE FEDERAL GOVERNMENT, TO ORGANIZATIONS LIKE THE FEDERAL TRADE COMMISSION AND THE UNITED STATES DEPARTMENT OF AGRICULTURE AND THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL.
I SUGGEST THAT THE COMPANY CAN NO LONGER LEARN ANYTHING THAT IS BENEFICIAL TO THEM FROM CONTINUED PUNISHMENT AND SCORN. THAT'S MY POINT.
NOW, I REALIZE THAT YOU MAY DISAGREE WITH ME OR WE WOULDN'T BE HERE IN THIS PHASE. THERE'S CERTAINLY THE POSSIBILITY THAT YOU FEEL DIFFERENTLY ABOUT THAT.
IF YOU HONESTLY BELIEVE THAT PUNISHMENT IS NECESSARY, FOR WHATEVER REASON, IF YOU THINK THAT PHILIP MORRIS HAS NOT GOTTEN THE MESSAGE, IF YOU THINK THAT SOMETHING NEEDS TO BE DONE, THEN PLEASE REMEMBER THIS: THAT THERE ARE TWO PARTS OF THE INSTRUCTIONS THAT YOU WERE READ AND THAT YOU'LL HAVE IN THE JURY ROOM THAT YOU SHOULD KEEP IN MIND.
ONE IS THE SECOND INSTRUCTION:

"BECAUSE PUNITIVE DAMAGES CONSTITUTE A PAYMENT TO THE PLAINTIFFS THAT EXCEEDS THE ACTUAL DAMAGE TO WHICH THEY ARE OTHERWISE ENTITLED, PUNITIVE DAMAGES MAY BE IMPOSED WHERE AND TO SUCH EXTENT, BUT ONLY WHERE AND TO SUCH EXTENT, AS NECESSARY TO ACHIEVE JUST PUNISHMENT AND ADEQUATE DETERRENCE."

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AND SECONDLY, PLEASE REMEMBER THAT IN THE PARAGRAPH THAT'S NUMBERED THREE AT THE END OF THE FIRST INSTRUCTION THAT YOU'LL HAVE, YOU'RE TOLD THAT:

"YOU MUST CONSIDER THAT THE PUNITIVE DAMAGES MUST BEAR A REASONABLE RELATION TO THE INJURY, HARM, OR DAMAGE ACTUALLY SUFFERED BY THE PLAINTIFFS."

YOU HAVE DECIDED WHAT THAT IS. I SUGGEST TO YOU THAT A FIGURE TWO TO THREE TIMES THE AMOUNT OF COMPENSATORY AWARD THAT YOU'VE ALREADY SETTLED ON MAY BE A REASONABLE RELATIONSHIP. IT MAY BEAR A REASONABLE RELATIONSHIP TO THE HARM SUFFERED, THE DAMAGE, THE INJURY SUFFERED BY MR. AND MRS. WHITELEY.

BUT THE KIND OF MONEY, THE FIGURES THAT MS. CHABER IS TALKING ABOUT ARE NOT ONLY INCREDIBLE AND UNREASONABLE BUT, IN FACT, IN SPITE OF HER EARLIER STATEMENT, THAT REALLY IS AN EXTREME PROHIBITIONIST APPROACH TO THIS LITIGATION IN AN INDIVIDUAL CASE.

I THINK, FOR EXAMPLE, THAT'S WHY THE CROSS-EXAMINATION OF MS. MERLO AND MS. BEASLEY INCLUDED QUESTIONS ABOUT "BUT YOU'RE ADVERTISING YOUR PRODUCT AT THE

POINT-OF-SALE, AREN'T YOU," AS THOUGH THAT IS SOMETHING TERRIBLY WRONG TO DO.

AT THIS POINT, ALL I CAN REALLY ASK YOU IS THAT YOU KEEP IN MIND ANOTHER PART OF THE FIRST INSTRUCTION IN TRYING TO BE FAIR AND REASONABLE, AS I'M SURE YOU'LL DO.

"WHETHER PUNITIVE DAMAGES SHOULD BE IMPOSED, AND IF SO, THE AMOUNT THEREOF, IS LEFT TO YOUR SOUND DISCRETION, EXERCISED WITHOUT PASSION OR PREJUDICE."

THAT'S WHAT WE ASK OF YOU. THANK YOU.

THE COURT: MR. FURR, SHALL WE TAKE A BRIEF RECESS?

MR. FURR: I'M READY, IF NO ONE ELSE WANTS TO.

THE COURT: LET ME ASK THE JURY: IS THERE ANYBODY THAT WANTS A BRIEF RECESS?

OKAY. AGAIN, NO TAKERS.

SO YOU CAN GO AHEAD, MR. FURR.

CLOSING ARGUMENT BY MR. FURR

MR. FURR: WELL, GOOD MORNING FOR THE LAST TIME, LADIES AND GENTLEMEN.

YOU HAVE ALREADY MADE WHAT WAS AN IMPORTANT, OBVIOUSLY A VERY DIFFICULT DECISION IN THIS CASE. YOU DETERMINED TO COMPENSATE MR. AND MRS. WHITELEY FOR WHAT YOU FOUND TO BE R.J REYNOLDS' RESPONSIBILITY FOR CAUSING HER DISEASE, AND YOU COMPENSATED THE WHITELEYS FULLY.

YOU AWARDED THEM ECONOMIC DAMAGES, YOU AWARDED THEM NONECONOMIC DAMAGES, YOU AWARDED THEM DAMAGES FOR LOSS

OF CONSORTIUM. AS YOU WELL KNOW, YOU'VE ALREADY AWARDED THE WHITELEYS OVER $1.7 MILLION.

AND YOU SPENT A LOT OF CARE IN CRAFTING THAT VERDICT. WE ALL KNOW THAT YOU DELIBERATED FOR OVER SEVEN DAYS BEFORE YOU REACHED THAT VERDICT. THAT'S DELIBERATING ABOUT ONE DAY FOR EACH WEEK OF EVIDENCE THAT YOU HEARD.

AND AS YOU HEARD YESTERDAY FROM MRS. BEASLEY, ALL 7,500 EMPLOYEES OF R.J. REYNOLDS HAVE BEEN TOLD WHAT YOUR VERDICT WAS, AND THEY APPRECIATE THE TIME AND THE CARE THAT

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YOU SPENT IN RENDERING THAT VERDICT.
BUT YOU'RE NOW BEING ASKED TO ADDRESS A VERY DIFFERENT QUESTION. YOU'RE BEING ASKED WHETHER AND HOW MUCH, IF YOU DETERMINE TO DO SO, TO AWARD PUNITIVE DAMAGES TO THE WHITELEY FAMILY. IT'S A VERY DIFFICULT QUESTION. AND YOU MAY FIND IT TO BE PERHAPS A MORE DIFFICULT QUESTION THAN THOSE THAT YOU'VE ALREADY ADDRESSED.
YOU'RE GOING TO DECIDE WHETHER THE EVIDENCE THAT YOU HEARD IN THIS CASE ABOUT LESLIE WHITELEY AND ABOUT R.J. REYNOLDS REQUIRES YOU TO AWARD THE WHITELEYS PUNITIVE DAMAGES.
AS YOU HAVE HEARD, PUNITIVE DAMAGES ARE DAMAGES THAT WILL PUNISH R.J. REYNOLDS AND WILL MAKE AN EXAMPLE OF THEM, AND WOULD HAVE AT LEAST THE HOPED-FOR EFFECT OF DETERRING FUTURE CONDUCT. BUT YOU ALSO KNOW THAT IT WILL CREATE A FINANCIAL WINDFALL TO THE WHITELEYS IF YOU CHOOSE TO DO SO.
NOW, AS JUDGE MUNTER INSTRUCTED YOU, YOUR VERDICT IN PHASE I REGARDING COMPENSATORY DAMAGES DOES NOT OBLIGATE

YOU TO AWARD PUNITIVE DAMAGES. THAT DETERMINATION IS LEFT TO YOUR SOUND DISCRETION. AND AS YOU'VE HEARD, YOU ARE TO MAKE THAT DETERMINATION BASED ON THE EVIDENCE AND WITHOUT PASSION AND WITHOUT PREJUDICE AGAINST THESE DEFENDANTS.
I HOPE THAT YOU WILL SAY TO YOURSELF THAT, AFTER SEVEN DAYS OF CAREFUL DELIBERATION, "WE DETERMINED TO AWARD COMPENSATORY DAMAGES TO THE WHITELEY FAMILY BUT THAT WE ARE GOING TO STOP THERE." YOU'LL FIND THAT THERE IS NO NEED TO PUNISH THESE DEFENDANTS FURTHER, TO MAKE ANY FURTHER EXAMPLE OF THEM, AND THAT NO PUNITIVE DAMAGES WILL HAVE ANY BENEFICIAL DETERRENT EFFECT.
LET ME TALK ABOUT DETERRENCE NOW, WHAT "DETERRENCE" MEANS. "DETERRENCE" MEANS PREVENTING FUTURE CONDUCT. AND AS YOU CONSIDER WHETHER TO AWARD PUNITIVE DAMAGES IN THIS CASE, I HOPE YOU WILL CONSIDER WHETHER THERE IS ANY LIKELIHOOD THAT THE CONDUCT THAT YOU BASED YOUR VERDICT ON IN PHASE I OF THIS CASE IS LIKELY TO BE REPEATED.
MRS. CHABER OFFERED YOU ALMOST NO EVIDENCE IN THIS CASE REGARDING ANY CONDUCT OF THE COMPANIES FOR THE WHOLE DECADE OF THE 1990S. THERE WERE ONLY A HANDFUL OF EXHIBITS ADMITTED INTO THIS CASE FROM R.J. REYNOLDS' FILES FOR THE WHOLE DECADE OF THE 1990S.
ESSENTIALLY, MS. CHABER DID NOT EVEN ATTEMPT TO PROVE TO YOU THAT THE COMPANIES DID ANYTHING IN THE 1990S THAT MADE THEM RESPONSIBLE FOR THE WHITELEY FAMILY. INSTEAD, MS. CHABER'S EVIDENCE CAME LARGELY FROM DOCUMENTS AND CONDUCT THAT OCCURRED IN THE 1950S, THE 1960S, IN THE

1970S.
WHATEVER IT IS THAT YOU FOUND THAT R.J. REYNOLDS SAID OR LEFT UNSAID OR DID OR LEFT UNDONE, THAT HAPPENED A LONG TIME AGO, WHEN THE COMPANY WAS VERY DIFFERENT THAN IT IS TODAY. THE EXECUTIVES IN THE 1950S, '60S AND '70S ARE GONE. THE SENIOR EMPLOYEES FROM THE 1950S, '60S AND '70S ARE GONE.
THE POSITIONS THAT THE COMPANY MAKES AND THE STATEMENTS THAT IT MAKES TO THE PUBLIC ABOUT SMOKING AND HEALTH AND ABOUT ADDICTION ARE VERY DIFFERENT THAN THE STATEMENTS MADE IN THE 1950S, '60S AND '70S. THE ADVERTISING AND MARKETING PRACTICES OF THE COMPANIES TODAY

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ARE VERY DIFFERENT THAN THEY WERE IN THE 1950S, '60S AND '70S.

IN RENDERING YOUR VERDICT IN PHASE I OF THIS CASE, YOU OBVIOUSLY ANALYZED THE EVIDENCE VERY CLOSELY AND YOU DIDN'T AGREE WITH ALL OF PLAINTIFFS' CLAIMS. THAT IS CLEAR. AND ALL OF YOU DID NOT AGREE WITH PLAINTIFF EVEN ON THE CLAIMS THAT WERE RETURNED AGAINST THE COMPANIES. THAT'S ALSO CLEAR.

WHAT'S A LITTLE MORE DIFFICULT FOR ME TO KNOW IS PRECISELY WHAT THE EVIDENCE WAS THAT YOU BASED YOUR VERDICTS ON IN PHASE I. WITHOUT HAVING HAD THE OPPORTUNITY TO TALK TO YOU AND FIND OUT WHAT THOSE VERDICTS WERE BASED ON, IT'S SOMEWHAT DIFFICULT FOR ME TO KNOW PRECISELY WHAT EVIDENCE YOU FOUND MOST PERSUASIVE IN PHASE I.

WHAT DOES APPEAR TO BE CLEAR FROM YOUR VERDICTS IN PHASE I IS THAT YOU FOUND THAT R.J. REYNOLDS MADE FALSE

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PROMISES AND MISLED LESLIE.

WHAT I WANT TO TALK TO YOU ABOUT NOW IS WHETHER THAT EVIDENCE REQUIRES YOU TO RETURN A VERDICT IN THIS PHASE IN WHICH YOU FIND TO AWARD PUNITIVE DAMAGES TO THE WHITELEYS.

ALTHOUGH I HAVEN'T EVEN BEEN ABLE TO SPEAK TO YOU, I'M VERY CONFIDENT THAT PART OF WHAT YOU FOUND IN PHASE I WAS THAT R.J. REYNOLDS HAD MISLED LESLIE ABOUT THE HEALTH CONSEQUENCES OF SMOKING, AND PERHAPS ABOUT THE ADDICTIVE PROPERTIES OF SMOKING.

BUT WHAT ALSO SHOULD BE VERY CLEAR IS THAT NO SMOKER OR NONSMOKER ATTEMPTING TO DECIDE WHETHER TO SMOKE OR NOT WILL EVER BE MISLED AGAIN.

R.J. REYNOLDS DOES NOT DENY THAT SMOKING CAUSES SERIOUS DISEASES, INCLUDING LUNG CANCER. R.J. REYNOLDS DOES NOT DENY THAT SMOKING CAN BE ADDICTIVE. R.J. REYNOLDS DOES NOT TAKE THE POSITION THAT THERE IS A CONTROVERSY OVER WHETHER SMOKING CAN CAUSE DISEASE AND THAT FURTHER RESEARCH IS NEEDED.

AND YOU KNOW THAT BECAUSE YOU HEARD THE TESTIMONY OF DR. DEBETHIZY. HE TOLD YOU THAT SMOKING HAS BEEN SHOWN TO CAUSE CERTAIN DISEASES, INCLUDING LUNG CANCER, AND HE TOLD YOU THAT SMOKING HAS BEEN SHOWN TO BE ADDICTIVE.

BUT PERHAPS, EVEN MORE IMPORTANTLY, ANY SMOKER WHO IS ATTEMPTING TO DECIDE WHETHER TO QUIT SMOKING OR NOT, AND ANY NONSMOKER WHO IS ATTEMPTING TO DECIDE WHETHER TO BEGIN SMOKING OR NOT, CAN ACCESS R.J. REYNOLDS' WEBSITE THAT YOU HEARD MRS. BEASLEY DESCRIBE TODAY -- EXCUSE ME --

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YESTERDAY. THAT'S EXHIBIT 6301. IT WILL BE IN THE JURY ROOM WITH YOU.

I HOPE THAT YOU WILL LOOK AT THAT EXHIBIT AND EXAMINE IT CLOSELY WHEN YOU ATTEMPT TO DETERMINE WHETHER OR NOT REYNOLDS NEEDS TO BE PUNISHED ANY MORE AND WHETHER OR NOT IT NEEDS TO BE DETERRED IN THE FUTURE.

WHEN YOU LOOK AT THAT EXHIBIT -- IT'S ONLY THREE PAGES -- YOU ARE GOING TO FIND THAT THE FIRST PAGE OF THAT EXHIBIT IS TITLED "OUR OPINIONS & PHILOSOPHY." AND ON THAT PAGE, YOU ARE GOING TO FIND THE FOLLOWING STATEMENTS:

"WE PRODUCE A PRODUCT THAT HAS SIGNIFICANT AND INHERENT HEALTH RISKS FOR A NUMBER OF SERIOUS DISEASES, AND MAY CONTRIBUTE TO

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CAUSING THESE DISEASES IN SOME INDIVIDUALS.

THERE IS AND SHOULD CONTINUE TO BE UNIVERSAL AWARENESS OF THOSE RISKS. WE WORK TO REDUCE THE RISKS ASSOCIATED WITH SMOKING THROUGH COMPREHENSIVE APPROACHES TO NEW PRODUCT DESIGN.

WE DO NOT ENCOURAGE NONSMOKERS TO START SMOKING.

WE DO NOT WANT CHILDREN TO SMOKE, NOT ONLY BECAUSE IT IS ILLEGAL TO SELL CIGARETTES TO MINORS IN EVERY STATE, BUT ALSO BECAUSE OF THE HEALTH RISKS AND BECAUSE CHILDREN LACK THE MATURITY OF JUDGMENT TO ASSESS THE RISKS."

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ON THE SECOND PAGE, WHICH IS TITLED "QUITTING," YOU ARE GOING TO FIND THE FOLLOWING STATEMENTS THAT R.J. REYNOLDS IS MAKING TO THE PUBLIC:

"OF COURSE, THE BEST WAY TO REDUCE THE RISKS OF SMOKING IS TO QUIT.

THERE IS UNIVERSAL AWARENESS OF THE CONCLUSIONS OF THE SURGEON GENERAL, PUBLIC HEALTH AND MEDICAL OFFICIALS THAT SMOKING CAUSES SERIOUS DISEASES, INCLUDING LUNG CANCER AND HEART DISEASE. INDIVIDUALS SHOULD RELY ON THESE CONCLUSIONS WHEN MAKING ANY DECISION REGARDING SMOKING.

MANY PEOPLE BELIEVE THAT SMOKING IS ADDICTIVE, AND AS THAT TERM IS COMMONLY USED TODAY, IT IS. MANY SMOKERS FIND IT DIFFICULT TO QUIT AND SOME FIND IT EXTREMELY DIFFICULT."

"THERE ARE MANY PRODUCTS, PROGRAMS AND RESOURCES AVAILABLE THAT HAVE BEEN DESIGNED TO ASSIST AN INDIVIDUAL IN QUITTING SMOKING. TO SMOKERS WHO WISH TO QUIT AND FIND SUCH AIDS TO BE OF ASSISTANCE, WE ENCOURAGE THEM TO USE THEM."

THEN, YOU ARE GOING TO FIND A SERIES OF LINKS TO OTHER SITES WHERE PEOPLE CAN GET ADDITIONAL INFORMATION ABOUT THE ADDICTIVE PROPERTIES OF NICOTINE AND SMOKING AND ASSISTANCE IN QUITTING.

THOSE LINKS INCLUDE: THE AMERICAN CANCER SOCIETY, THE AMERICAN HEART ASSOCIATION, THE AMERICAN LUNG

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ASSOCIATION, NICOTINE ANONYMOUS, THE OFFICE ON SMOKING AND HEALTH, THE NATIONAL CENTER FOR DISEASE PREVENTION AND HEALTH, THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES' HEALTHFINDER, QUITNET AND DRKOOP.COM."

IN FACT, YOU WILL SEE, FOR SOME OF THESE SITES, THEY ARE SUGGESTING AS TO HOW BEST TO SEARCH THOSE SITES TO FIND INFORMATION THAT MIGHT BE HELPFUL.

ON THE THIRD PAGE OF THE EXHIBIT TITLED "HEALTH ISSUES," HERE REYNOLDS IS SAYING TO THE PUBLIC:

"R.J. REYNOLDS TOBACCO COMPANY MANUFACTURES PRODUCTS THAT HAVE SIGNIFICANT AND INHERENT HEALTH RISKS FOR A NUMBER OF SERIOUS DISEASES, AND MAY CONTRIBUTE TO CAUSING THESE DISEASES IN SOME INDIVIDUALS.

THERE IS UNIVERSAL AWARENESS OF THE CONCLUSIONS OF THE SURGEON GENERAL, AND

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PUBLIC HEALTH AND MEDICAL OFFICIALS THAT
SMOKING CAUSES SERIOUS DISEASES, INCLUDING
LUNG CANCER AND HEART DISEASE. INDIVIDUALS
SHOULD RELY ON THESE CONCLUSIONS WHEN
MAKING ANY DECISION REGARDING SMOKING."
"SMOKERS HAVE ALMOST TWICE THE RISK OF HAVING
CORONARY HEART DISEASE AS NONSMOKERS.
SMOKERS' RISK OF GETTING LUNG CANCER IS
APPROXIMATELY 14 TIMES THAT OF NONSMOKERS.
SMOKERS' RISK FOR CHRONIC OBSTRUCTIVE
PULMONARY DISEASE IS APPROXIMATELY 10 TIMES
THAT OF NONSMOKERS."

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I HOPE THAT WHEN YOU LOOK AT THIS EXHIBIT IN THE JURY ROOM, YOU ASK YOURSELF WHETHER FURTHER DETERRENCE IS NEEDED? WHETHER THERE IS ANY LIKELIHOOD THAT SMOKERS OR NONSMOKERS ARE GOING TO BE MISLED IN THE FUTURE ABOUT SMOKING AND HEALTH AND ADDICTION BY R.J. REYNOLDS?

DURING THE FIRST PART OF THIS CASE, MRS. CHABER EMPHASIZED TWO PIECES OF EVIDENCE AND TWO DIFFERENT ORGANIZATIONS WHEN SHE WAS PUTTING HER EVIDENCE ON WITH RESPECT TO STATEMENTS OR MISREPRESENTATIONS MADE BY THE COMPANY IN THE PAST. SHE EMPHASIZED THE FRANK STATEMENT AND THE CTR AND SHE EMPHASIZED THE TOBACCO INSTITUTE, AND EXHIBIT 356, AS WELL AS OTHER STATEMENTS THAT WERE MADE BY THE TOBACCO INSTITUTE.

WELL, YOU HEARD YESTERDAY -- AND MR. HARDY HAS ALREADY MENTIONED THIS -- THE CTR AND THE TOBACCO INSTITUTE DO NOT EXIST ANY LONGER OTHER THAN FOR THE PURPOSE OF SERVING DEFENDANTS TO LAWSUITS. THEY NO LONGER MAKE PUBLIC STATEMENTS ON BEHALF OF THE TOBACCO INDUSTRY.

THERE WILL NEVER BE AGAIN A FRANK STATEMENT. THERE WILL NEVER BE AGAIN AN EXHIBIT 356.

LADIES AND GENTLEMEN, NO SMOKER OR NONSMOKER WILL EVER AGAIN BE MISLED ABOUT THE HEALTH CONSEQUENCES OF SMOKING OR ABOUT ADDICTION BY THE R.J. REYNOLDS TOBACCO COMPANY.

AGAIN, WITHOUT HAVING SPOKEN TO YOU, IT'S HARD TO KNOW FOR SURE, BUT YOU MAY HAVE BASED YOUR VERDICTS IN THE FIRST PHASE OF THIS CASE IN PART ON THE ADVERTISING AND MARKETING PRACTICES OF THE COMPANIES, PARTICULARLY IN THE

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1950S, '60S AND '70S.

WHAT SHOULD BE CLEAR TO YOU TODAY, I HOPE, IS THAT THOSE PRACTICES HAVE BEEN DRAMATICALLY CHANGED. YOU HEARD THAT UNDER THE MSA SETTLEMENT AGREEMENT WITH THE ATTORNEYS GENERAL IN 46 STATES, THE ADVERTISING AND MARKETING PRACTICES OF R.J. REYNOLDS ARE HEAVILY REGULATED.

I'M NOT GOING TO REVIEW THEM ALL, BUT YOU'VE HEARD THAT THE COMPANIES CAN NO LONGER USE CARTOON ILLUSTRATIONS IN ADS. YOU'VE HEARD THAT THE COMPANIES CAN NO LONGER USE BRAND NAMES TO ADVERTISE TEAM SPORTING EVENTS, SUCH AS FOOTBALL OR BASKETBALL OR BASEBALL OR HOCKEY OR SOCCER.

YOU'VE HEARD THAT THE COMPANIES CAN NO LONGER USE BRAND NAMES TO ADVERTISE AT CONCERTS. YOU'VE HEARD THAT THE COMPANIES CAN NO LONGER USE BRAND NAMES TO ADVERTISE AT ANY TYPE OF EVENT THAT HAS A SUBSTANTIAL NUMBER OF THE PEOPLE ATTENDING THE EVENT AS UNDERAGE.

YOU'VE HEARD THAT ALL OUTDOOR ADVERTISING HAS BEEN ELIMINATED. 14,000 BILLBOARDS HAVE BEEN TAKEN DOWN.

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THERE IS NO LONGER ANY TRANSIT ADVERTISING. THE COMPANIES ARE NO LONGER PERMITTED TO PLACE CIGARETTES IN MOVIES OR PLAYS OR OTHER TYPES OF THEATRICAL PRODUCTIONS.

BUT THE CHANGES DON'T REALLY END THERE. BEYOND THE CHANGES THAT HAVE BEEN BROUGHT ABOUT, THE CHANGES IN THEIR MARKETING AND ADVERTISING PRACTICES THAT HAVE RESULTED UNDER THE MASTER SETTLEMENT AGREEMENT, THE COMPANIES AND R.J. REYNOLDS HAVE TAKEN AFFIRMATIVE ACTION TO TRY TO PREVENT FUTURE HARM.

YOU HEARD THAT THESE COMPANIES HAVE DEVELOPED PROGRAMS THAT ARE DESIGNED TO PREVENT UNDERAGE SMOKING.

FOR EXAMPLE, MRS. BEASLEY TOLD YOU YESTERDAY THAT ALTHOUGH IT'S LEGAL TO DO SO, R.J. REYNOLDS DOES NOT ATTEMPT TO TARGET SMOKERS BETWEEN THE AGES OF 18 AND 21 IN CALIFORNIA. THEIR ADVERTISING IS TARGETED ONLY AT SMOKERS AGE 21 OR OLDER.

YOU ALSO HEARD THAT, UNDER THE MSA SETTLEMENT AGREEMENT, THAT R.J. REYNOLDS CONTRIBUTES TO THE FUNDING OF WHAT IS ESSENTIALLY AN INDEPENDENT PUBLIC HEALTH ORGANIZATION CALLED THE AMERICAN LEGACY FOUNDATION, WHOSE FUNCTIONS INCLUDE EDUCATING THE PUBLIC ABOUT UNDERAGE SMOKING AND COMBATTING UNDERAGE SMOKING.

YOU ALSO HEARD THAT R.J. REYNOLDS HAS DEVELOPED ITS OWN PROGRAM TO TRY TO ADDRESS THE PROBLEM OF UNDERAGE SMOKING. IN SOME WAYS, IT'S VERY DIFFICULT FOR THE COMPANIES TO DO THAT, BECAUSE CHILDREN TYPICALLY GAIN ACCESS TO THE CIGARETTES, AS YOU HEARD, IN RETAIL ENVIRONMENTS AND IN THE HOME. AND THE COMPANIES CAN'T CONTROL EITHER ONE OF THOSE ENVIRONMENTS.

BUT WITH RESPECT TO THE RETAIL ENVIRONMENT, THE COMPANIES HAVE DEVELOPED A PROGRAM THAT YOU HEARD DESCRIBED AS THE "WE CARD" PROGRAM, WHERE THEY HELP EDUCATE RETAILERS ABOUT THE MINIMUM AGE PURCHASING LAWS IN ALL STATES AND PROVIDE THEM MATERIALS THAT THEY CAN USE TO MAKE CLEAR THAT THEY WON'T SELL CIGARETTES TO UNDERAGE SMOKERS.

BEYOND THE RETAILERS, YOU ALSO HEARD THAT R.J. REYNOLDS HAS DEVELOPED A VERY SUCCESSFUL PROGRAM THAT IS

USED TO TARGET UNDERAGE CHILDREN AND CONVINCE THEM NOT TO TAKE UP SMOKING. IT'S CALLED THE "RIGHT DECISIONS RIGHT NOW" PROGRAM. IT WAS DEVELOPED FOR R.J. REYNOLDS BY EXPERTS IN THE FIELD OF COMMUNICATING WITH CHILDREN, INCLUDING CHILD PSYCHOLOGISTS.

YOU HEARD THAT THE MATERIALS IN THAT PROGRAM, WHICH INCLUDE STUDY GUIDES AND POSTERS, HAVE BEEN DISTRIBUTED NATIONWIDE AND ARE NOW IN 94 PERCENT OF THE PUBLIC MIDDLE SCHOOLS IN THIS COUNTRY, SCHOOLS IN WHICH CHILDREN AGE 12 TO 15 ARE EDUCATED. OF COURSE, THAT INCLUDES THE AGE SPAN IN WHICH LESLIE WHITELEY FIRST BEGAN SMOKING.

YOU KNOW THAT THOSE MATERIALS ARE PROVIDED FREE OF CHARGE TO THE SCHOOLS. AND YOU KNOW THAT THOSE MATERIALS ARE DISTRIBUTED OUTSIDE THE SCHOOLS ALSO. THEY'RE IN BLOCKBUSTER VIDEO. THEY'RE ON THE INTERNET. THERE'S A WEBSITE FOR THE "RIGHT DECISIONS RIGHT NOW" PROGRAM.

YOU'VE HEARD THAT PEOPLE HAVE VIEWED THESE MATERIALS SO EFFECTIVE THAT THEY -- EVEN SOME STATES HAVE ASKED TO USE THEM ON THEIR WEBSITES WHICH ARE DEDICATED TO UNDERAGE SMOKING, AND REYNOLDS OF COURSE HAS AGREED TO

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ALLOW
22 THEM TO DO SO.
23 REYNOLDS DIDN'T STOP THERE. IT'S DEVELOPED
24 MATERIALS UNDER THAT PROGRAM THAT ARE TARGETED TO THE
25 PARENTS IN HELPING PARENTS ADDRESS WITH CHILDREN THE
26 DECISION OF WHETHER TO BEGIN SMOKING, INCLUDING MATERIALS
27 THAT WERE DEVELOPED TO HELP PARENTS WHO THEY THEMSELVES
ARE
28 SMOKERS ADDRESS THE ISSUE OF WHETHER OR NOT THEIR CHILDREN

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1 SHOULD BEGIN SMOKING.
2 LADIES AND GENTLEMEN, THERE IS NO NEED FOR A
3 PUNITIVE DAMAGE AWARD, AND THERE IS NO FURTHER DETERRENCE TO
4 BE HAD WITH RESPECT TO THE CONDUCT THAT YOU HEARD IN THIS
5 CASE OF UNDERAGE SMOKING.
6 THERE ARE OTHER PROVISIONS IN THE MSA SETTLEMENT
7 AGREEMENT THAT PLACE VERY RESTRICTIVE REQUIREMENTS ON R.J.
8 REYNOLDS. YOU'VE HEARD THAT R.J. REYNOLDS HAS GIVEN UP
9 FUNDAMENTAL FIRST AMENDMENT RIGHTS TO LOBBY AND BECOME
10 INVOLVED IN LEGISLATIVE ACTIVITIES THAT ALL OTHER LEGAL
11 BUSINESSES IN THIS COUNTRY HAVE.
12 YOU'VE HEARD THAT R.J. REYNOLDS MAINTAINS A
13 WEBSITE DEDICATED TO CONTAINING DOCUMENTS THAT IT PRODUCES
14 IN LITIGATION ACROSS THE COUNTRY AND CONTINUES TO UPDATE
15 THAT WEBSITE AT ITS OWN COST AND PROVIDE A SEARCH ENGINE SO
16 THAT ANYONE INTERESTED IN REVIEWING REYNOLDS' DOCUMENTS IS
17 ABLE TO DO SO.
18 YOU'VE ALSO HEARD THAT THOSE DOCUMENTS ARE
19 MAINTAINED IN A DEPOSITORY IN MINNESOTA, WHICH IS
20 ESSENTIALLY A LIBRARY THAT'S MAINTAINED AT THE COST OF THE
21 TOBACCO COMPANIES THAT HOUSES ALL -- I BELIEVE THE NUMBER
22 WAS 60-PLUS MILLION PAGES OF DOCUMENTS THAT THESE COMPANIES
23 HAVE PRODUCED IN LITIGATION, SO THAT ANYBODY WHO WANTS TO
24 CAN EXAMINE THOSE DOCUMENTS.
25 THERE WERE SOME DISCUSSIONS IN THIS CASE ABOUT:
26 "HOW DO WE KNOW THAT THE COMPANIES ARE GOING TO ADHERE TO
27 THE REQUIREMENTS OF THE MSA SETTLEMENT AGREEMENT?"
28 WELL, YOU KNOW THAT THERE IS A STRINGENT

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1 ENFORCEMENT MECHANISM IN PLACE. THE NATIONAL ASSOCIATION OF
2 ATTORNEYS GENERAL POLICE THE COMPANIES' REQUIREMENTS AND
3 BEHAVIOR AND WHETHER IT COMPLIES WITH THE MSA.
4 IN FACT, YOU HEARD THAT THERE IS -- FOR EACH
5 COMPANY, THERE ARE A GROUP OF ATTORNEYS GENERAL WHO HAVE
6 RESPONSIBILITY FOR THAT COMPANY. FOR R.J. REYNOLDS, THE
7 ATTORNEY GENERAL OF OHIO IS THE HEAD OF THAT COMMITTEE, BUT
8 IT ALSO INCLUDES THE ATTORNEY GENERAL OF CALIFORNIA.
9 AND YOU HAVE HEARD THAT THOSE COMMITTEES ARE
10 DEDICATED, THEY ARE VIGILANTLY ACTIVE IN ENFORCING THE MSA
11 SETTLEMENT AGREEMENT.
12 YESTERDAY, MRS. BEASLEY DESCRIBED FOR YOU SOME OF
13 THE INSTANCES HERE IN CALIFORNIA WHERE THE ATTORNEYS GENERAL
14 HAVE FOUND BEHAVIOR THAT THEY WERE CONCERNED AS TO WHETHER
15 OR NOT IT COMPLIED WITH CERTAIN PROVISIONS OF THE MSA
16 SETTLEMENT AGREEMENT. YOU HEARD ABOUT THE ISSUE, ABOUT
17 WHETHER OR NOT REYNOLDS HAD IMPROPERLY CREATED A MOSAIC
WITH
18 CERTAIN ADVERTISING AT A RACE HERE IN CALIFORNIA.
19 AND YOU HEARD THAT WHEN THOSE ISSUES WERE BROUGHT
20 TO THE ATTENTION OF THE COMPANY, A FURTHER CHANGE OF
21 PRACTICES OCCURRED.

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MR. HARDY READ TO YOU ALREADY ONE OF THE INSTRUCTIONS I WAS GOING TO TALK TO YOU ABOUT, AND THAT'S THE SECOND INSTRUCTION THAT YOU WILL SEE WHEN YOU LOOK AT YOUR INSTRUCTIONS AGAIN.

BUT, LADIES AND GENTLEMEN, THERE IS NO NEED TO FURTHER PUNISH THESE COMPANIES. THESE COMPANIES HAVE BEEN HUMBLED. THEY HAVE BEEN PLACED UNDER A MICROSCOPE LIKE NO

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OTHER INDUSTRY IN THE HISTORY OF THE UNITED STATES HAS EVER BEEN PLACED. THEIR ADVERTISING AND MARKETING IS REGULATED. THEIR DOCUMENTS ARE ON THE INTERNET. THEY PAY FOR A WATCHDOG COMMITTEE TO MAKE SURE THAT THEY COMPLY WITH THE MSA SETTLEMENT AGREEMENT.

ESSENTIALLY, THESE COMPANIES HAVE BEEN PLACED ON PERMANENT PROBATION, AND EVERYTHING THEY DO IS MONITORED TO MAKE SURE THAT THEY COMPLY WITH THAT MSA SETTLEMENT AGREEMENT.

MS. CHABER TALKED TO YOU ABOUT SENDING A MESSAGE WITH YOUR PUNITIVE DAMAGE AWARD. AND SHE ASKED YOU TO SEND A MESSAGE AND DELIVER A VERDICT, BY MY CALCULATION, WHICH IS $115 MILLION.

USING THE SAME TYPE OF EXAMPLE THAT MS. CHABER USED EARLIER TODAY, WHAT SHE HAS ASKED YOU TO DO -- AGAIN, BY MY CALCULATION -- IS TO AWARD MR. AND MRS. WHITELEY A SUM THAT WILL ALLOW THEM TO SPEND $1,000 A DAY FOR THE NEXT 345 YEARS. THAT'S WHAT SHE'S ASKED YOU TO DO.

I WANT YOU TO CLOSELY THINK ABOUT WHETHER OR NOT THAT IS THE MESSAGE THAT YOU, AS MEMBERS OF THIS COMMUNITY, WANT TO SEND. YOU KNOW, A DECISION WHETHER OR NOT TO COMPENSATE AN INJURED PERSON IS A VERY DIFFERENT DECISION THAN WHETHER OR NOT TO AWARD THEM A FINANCIAL WINDFALL.

I HOPE THAT YOU'LL CONSIDER WHETHER YOU WANT TO SEND A MESSAGE TO CURRENT SMOKERS AND TO PEOPLE CONSIDERING SMOKING THAT THEY CAN SMOKE, DESPITE KNOWLEDGE OF THE WARNINGS, AND DO SO FOR 25 YEARS, AND IF THEY HAPPEN TO BECOME SICK, THEY WOULD THEN BE MADE WEALTHY BY A PUNITIVE

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DAMAGE AWARD IN A CASE LIKE THIS.

IT'S YOUR CHOICE. YOU HAVE TO DECIDE WHAT MESSAGE YOU, AS MEMBERS OF THE COMMUNITY, WANT TO SEND IN THAT REGARD.

I ALSO WANT TO TALK TO YOU A LITTLE BIT ABOUT SOME FINANCIAL INFORMATION. IF YOU DO DETERMINE TO AWARD PUNITIVE DAMAGES, ONE OF THE PIECES OF EVIDENCE THAT JUDGE MUNTER HAS INSTRUCTED YOU THAT YOU SHOULD CONSIDER IS THE DEFENDANTS' FINANCIAL CONDITION.

WHAT I'M GOING TO DO IS ASK YOU TO LOOK AT AND RECALL CLOSELY THE TESTIMONY OF BOTH MS. CHABER'S ECONOMIST, MR. JOHNSON, AND OF MR. ADAMS, THE CPA WHO IS THE CHIEF FINANCIAL OFFICER AT REYNOLDS THAT YOU HEARD YESTERDAY.

MR. ADAMS HAD A LOT OF EXPERIENCE -- EXCUSE ME -- MR. JOHNSON, THE ECONOMIST THAT PLAINTIFFS CALLED, HAD A LOT OF EXPERIENCE AND A LOT OF EXPERTISE WITH RESPECT TO ASSESSING THE ECONOMIC VALUE OF COMPANIES.

AND ONE OF THE THINGS THAT HE TOLD YOU THAT I THINK IS MOST IMPORTANT IS HE TOLD YOU THAT YOU NEED TO LOOK BEYOND NET WORTH IN ASSESSING A COMPANY'S FINANCIAL CONDITION.

AND SPECIFICALLY, HE TOLD YOU TO LOOK AT A NUMBER OF DIFFERENT INDICATORS TO GET A BROAD TOTAL PICTURE BEYOND NET WORTH WHEN ASSESSING A COMPANY'S FINANCIAL CONDITION.

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I THINK ONE OF THE REASONS HE MAY HAVE TOLD YOU THAT IS BECAUSE OF HOW MISLEADING NET WORTH CAN BE. IT IS CORRECT THAT IF YOU LOOK AT THE NET WORTH OF THE R.J. REYNOLDS TOBACCO COMPANY, YOU SEE A NUMBER OF APPROXIMATELY

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$5.5 BILLION. BUT THAT NUMBER IS EXTREMELY MISLEADING.

YOU HEARD THAT IN THAT FAMOUS LEVERAGED BUYOUT IN 1988, WHICH LED TO THE MOVIE AND BOOK TITLED "BARBARIANS AT THE GATE," THE R.J. REYNOLDS TOBACCO COMPANY TOOK ON AN UNPRECEDENTED AMOUNT OF DEBT, AND IN AN ACCOUNTING ADJUSTMENT, AN INORDINATE VALUE WAS ASSIGNED TO ITS GOODWILL AND TO ITS TRADEMARKS.

AND WHAT YOU ALSO HEARD, WHICH WENT UNCHALLENGED, IS WHEN YOU TAKE THE GOODWILL AWAY FROM THE ASSET COLUMN IN THE BALANCE SHEET FOR R.J. REYNOLDS, THAT YOU HAVE A COMPANY WHOSE NET WORTH APPEARS TO BE A NEGATIVE $2 BILLION.

AND IF YOU TAKE AWAY NOT ONLY THE GOODWILL BUT THE TRADEMARKS FROM THE ASSET COLUMN ON THE LEDGER SHEET, YOU HAVE A COMPANY WHOSE NET WORTH IS A NEGATIVE $5 BILLION.

I'M NOT SUGGESTING TO YOU THAT THE COMPANY HAS NO NET WORTH. WHAT I AM SUGGESTING TO YOU IS THAT AS YOU LOOK, AS MR. JOHNSON DID ALSO, YOU NEED TO LOOK AT MORE THAN JUST NET WORTH IN ORDER TO ASSESS THE FINANCIAL CONDITION OF R.J. REYNOLDS.

AND WHEN YOU DO, HERE ARE SOME OTHER FACTORS I HOPE YOU WILL CONSIDER. MR. ADAMS EXPLAINED TO YOU CURRENT CASH ON HAND AT R.J. REYNOLDS IS LESS THAN ITS CURRENT LIABILITIES. IN FACT, THE COMPANY HAS LOST MONEY IN THREE OF THE LAST FOUR YEARS. IN 1996, THE COMPANY LOST $110 MILLION. IN 1997, THE COMPANY LOST $324 MILLION. IN 1998, THE COMPANY LOST $897 MILLION.

LAST YEAR, THE COMPANY TURNED IT AROUND AND

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SHOWED A PROFIT OF $88 MILLION NATIONWIDE ON $7.5 BILLION OF SALES. THAT'S LESS THAN A 1 PERCENT PROFIT.

THE NUMBERS OF PACKS OF CIGARETTES, THE UNIT VOLUME SALES, HAVE DECREASED BY OVER 50 PERCENT SINCE 1980. ESSENTIALLY, R.J. REYNOLDS IS A COMPANY WITH A DECLINING MARKET SHARE IN A MARKET THAT IS ITSELF DECLINING.

YOU'VE HEARD THAT THE WORK FORCE HAS BEEN DECREASED BY 50 PERCENT SINCE 1988.

ONE OF THE THINGS THAT MS. CHABER SPENT A LOT OF TIME ON YESTERDAY WAS THE COMPENSATION PACKAGE THAT MRS. BEASLEY HAS. AND MR. JOHNSON INDICATED TO YOU THE MANNER IN WHICH EXECUTIVES ARE COMPENSATED IN A COMPANY MAY BE ONE MARKER OF THE FINANCIAL CONDITION OF THE COMPANY.

WELL, LET ME SUGGEST TO YOU, IN THE CASE OF THE TOBACCO COMPANIES, THERE'S ANOTHER EXPLANATION FOR MRS. BEASLEY'S SALARY. FIRST, YOU HEARD THAT IT'S NO DIFFERENT THAN THE TYPE OF COMPENSATION THAT SHE WOULD RECEIVE IN ANY OTHER INDUSTRY.

LET ME JUST ASK YOU TO CONSIDER, DO YOU THINK THAT THE TOBACCO COMPANIES CAN HIRE TALENTED YOUNG EXECUTIVES BY PAYING THEM LESS THAN THEY CAN GET PAID IN COMPARABLE POSITIONS IN OTHER INDUSTRIES?

OF COURSE NOT. THIS INDUSTRY IS UNDER CONSTANT ATTACK. THE JOB HAS PRESSURES THAT PROBABLY SIMILAR JOBS IN OTHER INDUSTRIES DON'T HAVE, SUCH AS COMING TO COURTROOMS LIKE THIS AND TESTIFYING ON MULTIPLE OCCASIONS.

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THE FACT THAT THE EXECUTIVES AT R.J. REYNOLDS ARE COMPENSATED SIMILAR TO THE WAY THEY WOULD BE COMPENSATED IN

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OTHER COMPANIES IS A VERY MISLEADING FACTOR WITH RESPECT TO THE FINANCIAL HEALTH OF THE COMPANY.

YOU HEARD THAT THE CREDIT RATING OF THE HOLDING COMPANY HAS BEEN DOWNGRADED. THERE WAS A LOT OF DISCUSSION, A LOT OF CROSS-EXAMINATION OF MR. ADAMS WITH RESPECT TO WHETHER OR NOT THE ENTRIES IN THE 10-K WERE CONSISTENT WITH THE ENTRIES IN EXHIBIT 1948, WHICH WAS THE FINANCIAL STATEMENT FOR THE TOBACCO COMPANY.

MR. BROWN CROSS-EXAMINED HIM AT LENGTH ON THAT TOPIC, AND I DON'T HAVE TIME TO ADDRESS ALL OF THE ISSUES THAT THEY DISCUSSED AT LENGTH, BUT LET ME SUGGEST THIS TO YOU.

FIRST, YOU NEED TO EVALUATE, I THINK, THE MANNER IN WHICH MR. ADAMS WAS ABLE TO FIELD THAT CROSS-EXAMINATION, WHETHER HIS ANSWERS WERE LOGICAL, CONSISTENT AND CONSISTENT WITH GOOD BUSINESS PRACTICES.

BUT SECOND, THERE WAS SOMETHING THAT I'M SURE YOU NOTICED YESTERDAY. DURING THE CROSS-EXAMINATION OF MR. ADAMS, THE PLAINTIFFS' ECONOMIST, MR. JOHNSON, CAME BACK INTO THE COURTROOM AND HE SAT RIGHT OVER HERE (INDICATING) IN THE FRONT ROW SO THAT HE COULD SEE THE BALANCE SHEET AND THE TESTIMONY OF MR. ADAMS.

AT THE END OF THIS CASE -- AT THE END OF OUR CASE WHEN WE RESTED, PLAINTIFFS WERE ASKED BY THE COURT IN FRONT OF YOU WHETHER THEY HAD ANY REBUTTAL EVIDENCE.

I'M GOING TO SUGGEST TO YOU THAT THE REASON THEY DID NOT HAVE ANY REBUTTAL EVIDENCE IS AFTER WATCHING THE TESTIMONY OF MR. ADAMS AND HEARING HIS EXPLANATION, MR.

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JOHNSON, AS AN EXPERIENCED, SOPHISTICATED ECONOMIST, KNEW THAT THE QUESTIONS HAD BEEN ANSWERED AND DID NOT SUGGEST TO PLAINTIFFS' COUNSEL THAT THERE IS ANY ADDITIONAL EVIDENCE THAT THEY SHOULD SOLICIT FOR YOU.

LADIES AND GENTLEMEN, THE PLAINTIFFS HAVE ASKED YOU TO AWARD $53 MILLION OF PUNITIVE DAMAGES TO THE WHITELEYS FROM THE R.J. REYNOLDS TOBACCO COMPANY.

WHEN YOU EVALUATE THAT REQUEST, I HOPE THAT YOU KEEP IN MIND THAT THE COMPANY HAS TURNED A PROFIT ONLY ONE OF THE LAST FOUR YEARS, AND THAT PROFIT LAST YEAR WAS $88 MILLION NATIONWIDE.

LADIES AND GENTLEMEN, I'M FINISHED. I THANK YOU ONCE AGAIN FOR YOUR ATTENTION. I AND THE COMPANY ARE VERY GRATEFUL FOR THE CAREFUL MANNER IN WHICH YOU DELIBERATED IN THE FIRST PHASE OF THIS CASE, AND I KNOW THAT ONCE AGAIN YOU WILL DELIBERATE CAREFULLY AND DELIVER A JUST AND FAIR VERDICT IN THIS PHASE.

THANK YOU VERY MUCH.

THE COURT: THE SAME QUESTION TO YOU, MS. CHABER?

MS. CHABER: I THINK I WILL GIVE THE JURY A BREAK, YOUR HONOR.

THE COURT: OKAY. JURORS, LET'S TAKE A 20-MINUTE RECESS TILL 10:30.

PLEASE CONTINUE TO FOLLOW THE ADMONITION, AND WE'LL SEE YOU BACK AT 10:30.

(RECESS TAKEN FROM 10:10 TO 10:32 A.M.)

THE COURT: WE ARE BACK ON THE RECORD.

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MS. CHABER.
MS. CHABER: THANK YOU, YOUR HONOR.

CLOSING REBUTTAL ARGUMENT BY MS. CHABER
MS. CHABER: "WE'VE TURNED OVER A NEW LEAF. WE'VE HAD A CHANGE. WE'RE A NEW CORPORATION."
WELL, A CORPORATION IS CONSIDERED A PERSON UNDER THE LAW. ONE PERSON. THE FACT THAT THE CORPORATE HEADS CHANGE DOESN'T CHANGE THE FACT THAT WE'RE TALKING ABOUT PHILIP MORRIS. WE'RE TALKING ABOUT R.J. REYNOLDS.
AND WE'RE TALKING ABOUT THEM FROM WHEN THEY BEGAN, AND WE'RE TALKING ABOUT INFORMATION THAT THEY NOW CLAIM, "OH, SUDDENLY -- OH, LOOK. WE'VE COME FORWARD. WE'VE PUT IT ON OUR WEBSITE, THE TRUTH. WE'VE PUT THE TRUTH ON OUR WEBSITE."
THIS TRUTH (INDICATING) WAS KNOWN IN 1954. THIS TRUTH WAS KNOWN IN 1964. THIS TRUTH WAS KNOWN IN 1974 AND IN '84.
AND YOU KNOW WHAT IT TOOK? IT TOOK 1994, WHEN THE STATE OF MISSISSIPPI SUED THEM TO RECOVER MEDICAL EXPENSES -- NOT FOR PUNISHMENT, NOT FOR PERSONAL INJURY, NOT FOR THE TYPE OF LAWSUIT WE'RE HERE FOR -- AND FORCE THEM TO FINALLY, FINALLY, SAY SOMETHING TO THE PUBLIC THAT WASN'T AN OUTRIGHT LIE OR A HALF-TRUTH.
THEY MADE THE CHOICE. THEY MADE THE CHOICE NOT TO DO IT SOONER. WHAT THEY DID WAS THEY WAITED UNTIL THEY GOT CAUGHT. IT TOOK A LAWSUIT, JUST LIKE IT'S GOING TO TAKE A LAWSUIT HERE, TO PUNISH THEM.

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WHEN THEY CAME INTO THE FIRST PHASE OF THIS CASE, DID THEY COME IN AND SAY, "WE HAVE SOME RESPONSIBILITY"? NO.
THEY SAID, "MAYBE IT WAS LEAFY VEGETABLES OR NOT ENOUGH EXERCISE OR SOMETHING ELSE OR RISK-TAKING BEHAVIOR, NOT OUR CIGARETTES. WE HAD NOTHING TO DO WITH IT."
THAT'S NOT TURNING OVER A NEW LEAF. THAT'S NOT CHANGING. THAT'S TAKING THE SAME, AS MR. HARDY PUT IT, BUNKER MENTALITY. THAT'S FORCING THE INDIVIDUAL TO HAVE TO SUE THEM TO BE COMPENSATED FOR INJURIES.
AND THAT'S WHAT YOU DID IN THE FIRST PHASE. YOU COMPENSATED. THIS ISN'T COMPENSATION WE ARE TALKING ABOUT NOW. WE ARE TALKING ABOUT PUNISHMENT, AND WE'RE TALKING ABOUT DETERRENCE.
YOU CAN'T LOOK AT FROM 2000 ON AND SAY, "WELL, IT DOESN'T MATTER WHAT WE DID FOR THE LAST 50 YEARS." YOU CAN'T DO THAT. THEY CANNOT BE ALLOWED TO GET AWAY WITH THAT.
YOU SEND THE WRONG MESSAGE TO CORPORATE AMERICA, THAT IT'S OKAY FOR COMPANIES TO MISLEAD, TO MISREPRESENT, AND TO DO IT AS LONG AS YOU WANT, TO KILL THOUSANDS OF PEOPLE IN CALIFORNIA, AND YOU DON'T HAVE TO CHANGE YOUR WAYS UNTIL SOMEBODY CATCHES YOU AND MAKES YOU.
THERE IS NOTHING THAT THEY DID ABOUT TAKING BILLBOARDS DOWN OR NOT MARKETING TO CHILDREN THAT THEY COULDN'T DO THEMSELVES. THEY MADE CORPORATE CHOICES, AND EVERY ONE OF THOSE CORPORATE CHOICES HAD, AS ITS PARAMOUNT CONCERN, MONEY. MONEY, NOT PEOPLE'S HEALTH. NOT TRUTH AND

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JUSTICE. MONEY. THAT'S ALL THEY CARED ABOUT.
AND THAT'S THE ONLY THING THAT THEY WILL HEAR.

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THE WEBSITE IS A CREATION OF BEING CAUGHT AND FORCED.
NOW, I WANT TO SHOW YOU SOMETHING ABOUT HOW THEY HAVE CHANGED AND ALL THE GOOD DEEDS THEY'RE DOING NOW.
WOULD SOMEBODY GET THE LIGHTS. THE BOTTOM ONES.
THIS IS MS. MERLO. THIS IS TODAY. THIS IS THE YEAR 2000. $110 MILLION FOR ALL OF THE YOUTH PREVENTION PROGRAMS, EVERYTHING, TOTAL. ALL THE THINGS THEY'VE BEEN FORCED TO DO BY THE STATES.
AND IN EXCESS OF $1 BILLION, $1 BILLION IN ADVERTISING. WHERE IS THAT ONE BILLION GOING? WHERE IS IT GOING? IT'S GOING TO THE STORES, TO THE SUPERMARKETS, TO THE CONVENIENCE STORES, TO THE GAS STATIONS, TO THE PLACES WHERE IT'S BEING PUT IN KIDS' FACES EVERY DAY. THAT'S WHERE THAT ADVERTISING IS GOING. ONE BILLION.
THOSE NUMBERS SHOULD BE REVERSED. THEY SHOULD BE SPENDING A BILLION DOLLARS -- YOU KNOW, THE STATES DON'T TELL THEM HOW MUCH MONEY TO SPEND. THAT'S A CORPORATE CHOICE. AND THEIR CORPORATE CHOICE WAS TO SPEND A BILLION DOLLARS OR MORE TO ADVERTISE.
NOW, WE ARE NOT TALKING ABOUT IN THE PAST. WE ARE TALKING RIGHT NOW. SO THINK ABOUT HOW MUCH ADVERTISING THAT IS. IF IT'S NOT ON A BILLBOARD, THINK ABOUT WHERE ALL OF THAT MONEY IS GOING, AND THINK ABOUT WHY THEY MADE THAT CORPORATE CHOICE.
THOSE ARE THE KINDS OF THINGS THAT YOU NEED TO DETER, DECISIONS LIKE THAT. DECISIONS TO SPEND A MINIMAL

AMOUNT DOING WHAT SOMEBODY HAS FORCED YOU TO DO.
AND I ALSO ASKED MS. MERLO WHETHER OR NOT PHILIP MORRIS COULD HAVE VOLUNTARILY TAKEN DOWN BILLBOARDS. DID THEY HAVE THAT CHOICE ANY POINT IN TIME? OF COURSE, THEY DID. DID THEY KEEP THEM UP UNTIL THE SECOND THEY WERE FORCED TO TAKE THEM DOWN?
AND WHAT HAPPENED? WE TALKED ABOUT THE FACT THAT BEFORE THEY WERE FORCED TO TAKE THEM DOWN ALL OVER THE PLACE, IN ALL THE STATES UNDER THE MSA SETTLEMENT AGREEMENT, THAT THE STATE OF MINNESOTA REQUIRED THAT THE BILLBOARDS COME DOWN IN THAT STATE.
AND WHAT DID MS. MERLO SAY WHEN SHE WAS ASKED AS THE SPOKESPERSON FOR PHILIP MORRIS: "WILL YOU TAKE THEM DOWN VOLUNTARILY ELSEWHERE? MINNESOTA IS MAKING YOU DO IT. WHY NOT TAKE THEM DOWN ELSEWHERE, TAKE THEM DOWN IN CALIFORNIA, TAKE THEM DOWN ELSEWHERE?"
AND WHAT DOES SHE SAY? "WE ARE ABSOLUTELY NOT CONSIDERING TAKING DOWN BILLBOARDS."
CORPORATE CHOICE. THEIR CHOICE. 1998, SHE'S SAYING THIS. "UNLESS SOMEBODY MAKES US DO IT, WE'RE NOT GOING TO DO IT."
ALL THEY CARE ABOUT IS MONEY. AND THEN 46 STATES, THAT'S PLUS THE OTHER THREE THAT HAD PREVIOUSLY SETTLED AND FORCE THEM TO DO THIS. FORCED THEM. FORCED THEM TO DO THIS.
AND YET, THEY STILL MANAGE TO DECIDE TO SPEND A BILLION DOLLARS ON ADVERTISING AND ONLY 100 MILLION ON DOING THE THINGS THE STATES HAVE ASKED THEM TO DO.

I NEVER HEARD ONE WORD FROM ANYONE THAT THEY WERE SORRY FOR ONE THING THAT THEY DID IN THE PAST, FOR ONE LIE THAT THEY TOLD, FOR MISLEADING THE PUBLIC.
THERE'S BEEN NO APOLOGY. ALL THEY SAY IS, "OH, WE'VE HEARD THE MESSAGE. WE TOLD EVERYBODY BACK AT THE

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HEADQUARTERS AND THEY'VE HEARD YOU."
THEY DON'T HEAR THOSE KINDS OF THINGS. WHAT THEY'RE HOPING IS THEY DON'T HEAR FROM YOU AGAIN. AND THEY'LL BE THRILLED AND THEY'LL BE BREAKING OUT THE BOTTLES OF SCOTCH IN THE BOARDROOM TOASTING THE FACT THAT THEY GOT AWAY WITH IT AGAIN, THAT THEY HAVE NEVER BEEN PUNISHED, AND THEY NEED TO BE.
YOU KNOW, EVERY POLICY DECISION THAT IS MADE BY A COMPANY IS A CALCULATION: IS AN EXPECTED RESULT WORTH THE PRICE? AND THEY HAVE CALCULATED EVERYTHING THEY HAVE DONE. AND THEY ARE NOT REPENTANT IN THE LEAST ABOUT IT.
HERE IS -- HERE'S MS. MERLO AGAIN. "PUBLIC PERCEPTION," NOT "WE DID IT." "THE PUBLIC PERCEPTION WAS THAT TOBACCO COMPANIES, INCLUDING PHILIP MORRIS, HAVE MISLED THE PUBLIC." AND SHE SAID, "THE PERCEPTION IS WE WERE OUT OF STEP WITH SOCIETY."
THEY WEREN'T ONLY OUT OF STEP WITH SOCIETY. THEY WERE OUT OF STEP WITH SCIENCE. THEY WERE OUT OF STEP WITH DECENCY.
"TO YOUR KNOWLEDGE, HAS PHILIP MORRIS FORMED A COMPANY POSITION ON ANY ISSUE IT FEELS APPROPRIATE TO APOLOGIZE TO THE AMERICAN PEOPLE OR ITS CUSTOMERS ABOUT ANY INCIDENTS IN ITS PAST?

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"NO, I'M NOT AWARE OF THAT."
THAT'S WHO THEY BROUGHT IN. BUT THEY DON'T WANT YOU TO PUNISH THEM, BECAUSE THEY PROMISED THAT THEY'LL CHANGE THEIR WAYS.
WELL, THE ONLY WAY THEY CHANGE THEIR WAYS IS BECAUSE THE GOVERNMENT -- THE GOVERNMENTS OF THE STATES ARE GOING TO FORCE THEM TO CHANGE THEIR WAYS.
AND YET YOU HEARD THAT, GEE, THEY HAD SOME CONCEPTIONS THAT THEY COULD GET AROUND THESE PROVISIONS. "OKAY. WE WON'T JUST PUT UP OUR NAME ONCE. WE'LL STRING IT UP SIDE BY SIDE ALL THE WAY ACROSS SO YOU CAN'T POSSIBLY MISS IT." MAYBE THAT'S WHERE THE BILLIONS OF DOLLARS ARE GOING.
AND FOR 50 YEARS, THE GOVERNMENT HASN'T BEEN ABLE TO STOP THEM FROM LYING TO THE AMERICAN PUBLIC, FROM TELLING THESE HALF-TRUTHS. YOU HEARD FROM PROBABLY THE MOST FAMOUS PERSON WITH RESPECT TO CANCER CAUSATION, LUNG CANCER, CIGARETTE SMOKING, WHO WAS KNIGHTED, SIR RICHARD DOLL. AND HE SAID, "1954, IT WAS KNOWN."
AND WHAT DID THEY DO? THEY COME OUT AND THEY SAY, "IT'S NOT TRUE. IT HASN'T BEEN PROVEN. AND DON'T WORRY. WE'LL GET BACK TO YOU WITH THE INFORMATION. WE'LL LET YOU KNOW WHEN IT'S BEEN PROVEN."
AND I DON'T KNOW IF YOU REMEMBER THE ADDICTION PART. I THINK THAT THERE WAS SOMETHING LEFT OUT BY MR. FURR.
"OH, YES, WE ADMIT IT'S ADDICTIVE, AS THAT IS COMMONLY KNOWN, LIKE COFFEE, NOT LIKE COCAINE OR HEROIN."

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WELL, THAT'S NOT WHAT THE EVIDENCE WAS. AND YET THEY'RE STILL DISPUTING THAT.
THEY WERE HUMBLED. I HEARD THOSE WORDS. "WE WERE HUMBLED. WE'RE HUMBLED BEFORE YOU." NONSENSE. THEY WERE CAUGHT. THEY WERE NOT HUMBLED.
YOU WAIT UNTIL YOU'RE CAUGHT, AND NOW YOU CRY, "WE ARE SORRY." NO. THEY NEVER DID SAY THAT PART. THEY SAID, "WE'LL NEVER DO IT AGAIN. WE'VE TURNED OVER A NEW

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LEAF. WE'VE TURNED OVER A NEW LEAF. TRUST US."
MS. MERLO SAID, "TRUST US. JUST GIVE US SOME TIME AND TRUST US."
THEY WERE GIVEN 50 YEARS TO COME FORWARD WITH THE TRUTH, BUT WE'RE SUPPOSED TO TRUST THEM NOW.
THEY HAVEN'T BEEN PUNISHED. IF YOU DO NOT FIND PUNITIVE DAMAGE AGAINST THEM, THEY WILL NOT BE DETERRED. THEY WILL GO ON CONTINUING TO BLAME OTHER THINGS FOR PEOPLE'S INJURIES.
THEY DENIED IT IN THIS COURTROOM. YOU DIDN'T BELIEVE THEM, THESE COMPANIES, THESE TWO COMPANIES SITTING HERE WITH THEIR SPOKESPEOPLE, THE TOBACCO INSTITUTE AND CTR.
OH, THEY'RE SO PROUD. THEY SAY, "DON'T WORRY BECAUSE CTR AND TI HAVE BEEN DISBANDED." AGAIN, LAWSUITS. GOT CAUGHT.
THEY ARE THE MASTERS OF SHAPING PUBLIC OPINION AND WHAT THEY WANT TO DO IS TO HAVE YOU SAY, "OKAY. WE TRUST YOU NOW. YOU LIED FOR 50 YEARS, BUT WE TRUST YOU NOW. WE BELIEVE YOU'LL BE GOOD CORPORATE CITIZENS IN THE

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FUTURE."
YOU HAVE TO MAKE SURE THAT THEY WILL BE GOOD CORPORATE CITIZENS IN THE FUTURE. IF THEY WALK AWAY FROM THIS, THEY WALK AWAY HAPPY, AND THEY WALK AWAY THINKING, "ALL WE HAVE TO DO IS THE MINIMUM. ALL WE HAVE TO DO IS WHAT SOME STATE MAKES US DO, WHAT SOME GOVERNMENT MAKES US DO."
THAT'S WHERE THEIR CONSCIENCE IS. THEIR CONSCIENCE IS: "LET'S FOLLOW THE LAW AND LET'S TRY TO STEP ACROSS IT. SEE WHAT HAPPENS. OOPS. WE MAY GET CHASED BACK A LITTLE BIT." THIS IS THE TYPE OF THING PUNITIVE DAMAGES -- IT'S EXACTLY WHAT IT IS DESIGNED FOR AND DEVISED FOR.
THEY WANT TO SAY, "OH, WELL, BUT YOU'VE GOT TO KEEP IN MIND, THIS IS A WINDFALL TO LESLIE WHITELEY," SO THEY SHOULD ESCAPE PUNISHMENT?
THAT'S THE WAY OUR SYSTEM WORKS. MAYBE THAT'S NOT PERFECT, BUT THAT'S WHERE THE PUNITIVE DAMAGE MONEY GOES. BUT THAT'S THE WAY IT IS. THAT'S THE WAY OUR LAW IS. THAT'S NOT AN EXCUSE. THAT'S NOT A REASON TO SAY, "DON'T PUNISH US."
YOU KNOW, THEY TALKED ABOUT HOW MUCH MONEY THIS IS. I'M TERRIBLE AT MATH, BUT WHAT I ASKED FOR IS LESS THAN 1 PERCENT OF THEIR NET WORTH.
YOU KNOW WHAT THAT IS? LESS THAN 1 PERCENT? THAT'S LIKE GETTING A TICKET FOR PARKING AT AN EXPIRED PARKING METER TO THIS COMPANY, TO THESE TWO COMPANIES.
MR. FURR CHALLENGED ME. "OH, MR. JOHNSON WAS

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SITTING IN THE COURTROOM AND THEY COULD HAVE CALLED HIM BACK." WE DIDN'T NEED TO CALL HIM BACK, BECAUSE I THINK YOU'RE SMART ENOUGH TO KNOW THAT MONEYS GOT MOVED AROUND, IN
ACCOUNTING WAYS AND SO FORTH AND SO ON, WITH THEIR HANDS OUT OF THEIR POCKETS. "OH, WE'RE POOR." "OH, WE'RE POOR" IS A LIE.
AND THEY'RE RIGHT. NET WORTH ISN'T THE ONLY THING YOU CAN LOOK AT. AND I THINK REYNOLDS CLAIMS THAT, WELL, GEE, PART OF THE REASON THAT THEY CLAIM THEIR NET WORTH IS DOWN IS BECAUSE OF TRADEMARKS.

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WELL, LET ME ASK YOU WHAT YOU THINK THE TRADEMARK FOR CAMEL, FOR SALEM, THE FOUR OF THE 10 MOST POPULAR CIGARETTES?

AND BY THE WAY, WHO DO YOU THINK IS NO. 1? PHILIP MORRIS.

BUT YES, LOOK AT OTHER THINGS. LOOK AT SALES, TOTAL ASSETS. AND WHEN YOU CALCULATE THOSE SALES ON A DAILY BASIS, IT CAME TO $21 MILLION A DAY.

WHAT I HAVE ASKED YOU FOR FROM R.J. REYNOLDS IS TWO -- A LITTLE MORE THAN TWO DAYS' WORTH OF THEIR SALES. TWO DAYS' WORTH OF CIGARETTES THAT MAY KILL HOW MANY PEOPLE? WE DON'T KNOW.

THAT IS ALL THE PUNISHMENT, AND THEY WILL WALK AWAY, BUT THEY WILL HEAR YOU. THEY WILL NOT HEAR YOU IF YOU COME BACK WITH SOME NUMBER LIKE THEY SUGGESTED. THAT'S A NUMBER THAT IS A MOSQUITO BITE THAT'S GOING TO BARELY BE NECESSARY TO SCRATCH. THEY'RE NOT GOING TO CARE.

YOU KNOW, THE JURY PROCESS IS PROBABLY, IN OUR

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DEMOCRACY, THE MOST PARTICIPATORY ASPECT OF IT. THINK ABOUT IT. WHERE ELSE WOULD 16 PEOPLE FROM DIVERSE BACKGROUNDS, WHO DIDN'T KNOW EACH OTHER BEFORE THIS CASE COME TOGETHER, PEOPLE WHO MAY NEVER HAVE MET OTHERWISE, AND PUT THEIR COLLECTIVE WISDOM TOGETHER? WHERE ELSE CAN THAT KIND OF PARTICIPATION IN THE PROCESS MAKE A DIFFERENCE? THIS IS SUPPOSED TO MAKE A DIFFERENCE. YOUR ACTIONS WILL MAKE A DIFFERENCE.

YOU KNOW, WHEN WE SEE -- WHEN WE SEE INJUSTICE IN THE COUNTRY, WHEN WE SEE SOMETHING WRONG, WE ARE THE TYPE OF PEOPLE WHO GO ABOUT AND CHANGE IT.

WHEN BRITISH RULE WAS ONEROUS, THERE WAS THE AMERICAN REVOLUTION. WHEN WE SAW AN INJUSTICE WITH SLAVERY, THAT WAS CHANGED. WHEN WE SAW THE INJUSTICE THAT WOMEN COULD NOT VOTE, THAT WAS CHANGED.

YOU ARE THE CONSCIENCE OF THE COMMUNITY. YOU HAVE BEEN CHOSEN AND PICKED AND YOU SAT THROUGH EVIDENCE AND LISTENED TO THIS CASE AS REPRESENTATIVES OF THE COMMUNITY. AND YOU ARE THE PEOPLE WHO HAVE TO TELL BUSINESSES HOW THEY ARE TO CONDUCT THEMSELVES.

IF YOUR MESSAGE IS, "GO AHEAD AND DON'T BE TRUTHFUL, DON'T BE HONEST, MISREPRESENT, HARM THOUSANDS OF PEOPLE, AND THEN WHEN YOU'RE CAUGHT, PLEAD A CHANGE, A CHANGE IN ATTITUDE, ONE FORCED UPON YOU," YOU ARE PEOPLE WHO HAVE RESPONDED IN A RESPONSIBLE WAY. YOU HAVE SAT. YOU HAVE USED REASON. WE EXPECT YOU WILL USE REASON AGAIN.

THEY SAY, "WITHOUT PASSION. WITHOUT PREJUDICE." WHAT THEY MEAN BY THAT IS, "OH, DON'T HURT US. WE DIDN'T

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REALLY MEAN TO DO IT."

BUT THEY'VE NEVER SAID IT. WE GAVE THEM THE OPPORTUNITY FROM THE STAND TO SAY, "I'M SORRY. WE'RE SORRY FOR WHAT WE DID." AND THEY NEVER SAID IT.

THE ONLY WAY FOR THEM TO SAY THEY'RE SORRY, THE ONLY WAY FOR THEM TO BE PUNISHED FOR PAST ACTS AND TO MAKE SURE, AND TO ENSURE THAT THIS OR ANYTHING LIKE IT DOESN'T GO ON IN THE FUTURE IS TO AWARD PUNITIVE DAMAGES THAT WILL BE FELT.

THANK YOU.

THE COURT: JURORS, I'M GOING TO GIVE YOU THE

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CONCLUDING INSTRUCTION AT THIS TIME.
"YOU HAVE HERETOFORE RETURNED YOUR VERDICT ON THE ISSUES OF LIABILITY AND ACTUAL DAMAGES IN FAVOR OF THE PLAINTIFFS AGAINST PHILIP MORRIS INCORPORATED AND R.J. REYNOLDS TOBACCO COMPANY. NOW, YOU SHALL RETIRE AND DELIBERATE ON THE ISSUE OF PUNITIVE DAMAGES.
THE FOREPERSON PREVIOUSLY SELECTED MAY PRESIDE OVER YOUR DELIBERATIONS OR YOU MAY ELECT TO CHOOSE A NEW FOREPERSON.
ALL JURORS SHALL PARTICIPATE IN ALL DELIBERATIONS AND VOTE ON EACH ISSUE TO THE EXTENT REQUIRED BY THE INSTRUCTIONS ON THE FORM OF VERDICT WHICH WILL BE PROVIDED TO YOU. ANSWER THE QUESTIONS ACCORDING TO THE DIRECTIONS ON THE FORM. IF NINE OR MORE

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CAN AGREE ON THE ANSWERS, YOU SHALL RETURN A SPECIAL VERDICT IN THE FORM OF WRITTEN ANSWERS TO QUESTIONS ON THE FORM YOU WILL BE GIVEN.
"AS SOON AS NINE OR MORE JURORS HAVE AGREED UPON A VERDICT ON THE ISSUE OF PUNITIVE DAMAGES, HAVE IT SIGNED AND DATED BY YOUR FOREPERSON AND THEN RETURN WITH IT TO THIS ROOM. IT NEED NOT BE THE SAME NINE OR MORE JURORS WHO AGREE UPON EACH ANSWER TO THE QUESTIONS. EACH OF YOU MAY BE ASKED IN OPEN COURT HOW YOU VOTED ON EACH QUESTION WHICH YOU ANSWERED. IF SO, EACH JUROR MUST BE ABLE TO STATE TRUTHFULLY THAT THE ANSWER DOES OR DOES NOT EXPRESS HIS OR HER VOTE.
IF YOU HAVE ANY QUESTIONS OF THE COURT, YOU MAY COMMUNICATE WITH ME BY PUTTING YOUR QUESTIONS IN WRITING AND DELIVERING THEM TO THE BAILIFF."
AS WE DID IN THE LAST PHASE, I'M GOING TO MAKE AVAILABLE TO YOU IN THE JURY ROOM AN ORIGINAL AND 12 COPIES OF THE SPECIAL VERDICT FORM. AGAIN, THE ORIGINAL WILL BE STAMPED "ORIGINAL" ON THE FRONT PAGE AND THE 12 COPIES ARE FOR YOUR INDIVIDUAL USE.
THE EXHIBITS WHICH ARE IN EVIDENCE IN BOTH PHASES OF THIS CASE ARE GOING INTO THE JURY ROOM WITH YOU AT THE START OF YOUR DELIBERATIONS.
ONCE AGAIN, YOU MAY TAKE INTO THE JURY ROOM ANY

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NOTES WHICH YOU HAVE TAKEN HERE IN COURT DURING THE COURSE OF THE TRIAL. AND AGAIN, YOU WILL NEED TO MEET WITH ME AT THE END OF ANY AND EACH DAY DURING WHICH YOUR DELIBERATIONS CONTINUE.
WITH RESPECT TO LUNCH, LUNCH IS GOING TO BE HANDLED IN THE SAME MANNER THAT IT WAS HANDLED IN THE LAST PHASE OF THIS CASE.
LET ME ASK COUNSEL: IS THERE ANYTHING MORE THAT ANYBODY WANTS ME TO TELL THE JURY OR DO YOU WANT TO HAVE A SIDEBAR WITH ME ON ANY ISSUE BEFORE I HAVE THE CLERK SWEAR THE BAILIFF?
MS. CHABER: NO, YOUR HONOR.
MR. HARDY: NO, YOUR HONOR.
MR. FURR: NO, YOUR HONOR.

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THE COURT: OKAY. TATSUO, WOULD YOU PLEASE SWEAR THE BAILIFF.
(BAILIFF SWORN BY THE CLERK)
THE COURT: OKAY. WOULD THE 12 JURORS PLEASE FOLLOW THE BAILIFF FROM THE COURTROOM AND THE ALTERNATES REMAIN. I'LL SPEAK TO YOU SEPARATELY.
(THE JURY RETIRED TO DELIBERATE AT 11:06 A.M.)
THE COURT: PLEASE BE SEATED.
OKAY. THE RECORD SHOULD REFLECT THAT THE 12 JURORS HAVE DEPARTED, AND THESE COMMENTS ARE BEING ADDRESSED TO THE FOUR ALTERNATES, AND THE COMMENTS ARE GOING TO SOUND FAMILIAR TO YOU.
I NEED TO REMIND YOU THAT YOU REMAIN AS JURORS IN THIS CASE, SO IT'S ABSOLUTELY CRITICAL THAT YOU CONTINUE TO

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FOLLOW THE ADMONITION. YOU MAY NOT DISCUSS THIS CASE WITH ANYONE, YOU MAY NOT LET ANYONE DISCUSS THIS CASE WITH YOU. YOU MAY NOT FORM OR EXPRESS ANY OPINIONS ABOUT THIS CASE.
HOWEVER, AS IN THE CASE OF THE LAST PHASE, IT WON'T BE NECESSARY TO HOLD YOU IN THIS COURTROOM IF YOU ARE ABLE TO GIVE TATSUO A TELEPHONE NUMBER WHERE YOU CAN BE REACHED AT ALL BUSINESS HOURS OF THE WEEKDAY.
SO LET ME ASK EACH OF YOU IN TURN: CAN YOU GIVE TATSUO A TELEPHONE NUMBER WHERE YOU WILL BE ABLE TO BE REACHED AT ALL BUSINESS HOURS OF ANY BUSINESS DAY, AND ALSO BE BACK IN THE COURTROOM WITHIN AN HOUR OR SO, IF HE SHOULD REQUEST IT?
CAN YOU DO THAT, MS. VARGAS?
JUROR NO. 13: YES.
THE COURT: OKAY. CAN YOU DO THAT, MR. ROYALE?
JUROR NO. 17: YES.
THE COURT: CAN YOU DO THAT, MS. SIU-MENDOZA?
JUROR NO. 18: YES.
THE COURT: CAN YOU DO THAT, MS. ROBISON?
JUROR NO. 16: YES.
THE COURT: OKAY. I'M GOING TO ASK YOU TO LEAVE YOUR NOTEBOOKS HERE WITH TATSUO.
IF THE JURY SHOULD REACH A VERDICT, TATSUO WILL CALL YOU AND TELL YOU WHAT HAS OCCURRED AND WILL TELL YOU THAT THE ADMONITION IS OFF.
IF THAT SHOULD OCCUR, YOU WILL THEREAFTER BE FREE TO DISCUSS THIS CASE WITH ANYONE AND EVERYONE. YOU ARE ALSO FREE TO CHOOSE TO DECLINE TO DISCUSS IT WITH ANYONE AND

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EVERYONE. THE CHOICE WILL BE YOURS.
BUT WHAT IS ABSOLUTELY CRITICAL IS THAT UNLESS AND UNTIL TATSUO FREES YOU OF THE ADMONITION, THAT YOU CONTINUE TO BE BOUND BY IT. IT'S ABSOLUTELY CRITICAL THAT YOU CONTINUE TO RESPECT IT.
IF FOR ANY REASON ANY OF THE FIRST 12 IS UNABLE TO COMPLETE THEIR DELIBERATIONS IN THIS PHASE OF THE CASE, THEN ONE OR MORE WILL BE SUBSTITUTED IN AS DELIBERATING JURORS.
SO I WANT TO THANK YOU VERY MUCH FOR THE PUBLIC SERVICE THAT YOU HAVE PERFORMED FOR US, BUT ALSO REMIND YOU THAT THAT PUBLIC SERVICE IS NOT AT AN END, THAT YOU CONTINUE AS JURORS IN THIS CASE UNLESS AND UNTIL TATSUO TELLS YOU OTHERWISE.
SO THANK YOU VERY MUCH. AND I'M GOING TO STAND IN RECESS AND LET TATSUO GET YOUR NOTEBOOKS AND TALK TO

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YOU.
THANK YOU. WE'RE OFF THE RECORD.
(RECESS TAKEN FROM 11:08 TO 4:25 P.M.)
THE COURT: GOOD AFTERNOON, EVERYBODY. THE RECORD SHOULD REFLECT THAT THE JURY HAS RETURNED TO THE COURTROOM.
MAY I ASK WHO THE FOREPERSON IS WITH RESPECT TO THIS PHASE OF THE PROCEEDINGS?
(HAND RAISED)
THE COURT: MR. CRISCOLA.
MR. CRISCOLA, IT IS MY UNDERSTANDING THAT THE JURY HAS NOT AS YET REACHED A VERDICT IN PHASE II OF THIS

ACE BUT WISHES TO ADJOURN FOR THE WEEKEND AND RETURN ON MONDAY MORNING TO CONTINUE ITS DELIBERATIONS.
AM I CORRECT?
JUROR NO. 3: CORRECT, YOUR HONOR.
THE COURT: OKAY. AND WHAT TIME ARE YOU GOING TO RESUME ON MONDAY?
JUROR NO. 3: 9:30.
THE COURT: AND YOU HAVE WORKED OUT AN ARRANGEMENT AS TO WHERE TO MEET THE BAILIFF AT THAT TIME?
JUROR NO. 3: YES, WE HAVE.
THE COURT: OKAY. AS YOU KNOW, THE ADMONITION IS BACK IN EFFECT. PLEASE BE VERY CAREFUL OVER THE WEEKEND NOT TO DISCUSS THIS CASE WITH ANYONE, NOT TO LET ANYONE DISCUSS IT WITH YOU, AND NOT TO FORM OR EXPRESS ANY OPINIONS ABOUT THE CASE.
OTHER THAN THAT, HAVE A GOOD WEEKEND. WE'LL SEE YOU ON MONDAY.
(THE PROCEEDINGS ADJOURNED AT 4:27 P.M.)

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